Statement of the U.S. Chamber of Commerce

ON: Legislative Proposals to Relieve the Red Tape Burden on investors and Job Creators

TO: The Subcommittee on Capital Markets and Government Sponsored Enterprises

BY: Tom Quaadman

DATE: May 23, 2013

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Chairman Garrett, Ranking Member Maloney and members of the Capital Markets and Government Sponsored Enterprises subcommittee. My name is Tom Quaadman, vice president of the Center for Capital Markets Competitiveness (CCMC) at the U.S. Chamber of Commerce (Chamber). The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region. I appreciate the opportunity to testify before the subcommittee today on behalf of the businesses that the Chamber represents.

The Chamber supports the bills that are the subject of today's hearing— H.R. 1105, the Small Business Capital Access and Jobs Preservation Act; H.R. 1135, the Burdensome Data Collection Relief Act; H.R. 1564, the Audit Integrity and Jobs Protection Act; and a discussion draft, presented by Representative Wagner, to amend Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, regarding the provision of protections for retail customers and their relationship with broker-dealers. These bills address several of the issues the Chamber highlighted earlier this year for further action by Congress and the Administration to provide the financial regulatory structure and oversight that is needed for the American economy to grow and create jobs.

In 2007, the Chamber created the Center for Capital Markets Competitiveness to promote financial regulatory reform needed for efficient capital markets in a 21st century global economy. The Chamber did so because even before the financial crisis, it was becoming more difficult for American businesses to raise capital, there was and continues to be a steady decline in the number of public companies in the United States, and new businesses are eschewing traditional forms of public company financing in favor of more private forms of financing. While we need diverse public and private company capital markets, this overall trend is not a positive one for investors or the American economy.

We can no longer wait to address these issues if we want the American capital markets to be the most efficient and attractive in the world.

In March the Chamber released the **Fix, Add, Replace** Agenda (FAR Agenda) to address financial regulatory reform in the wake of the passage of the Dodd-Frank Act.[1] The FAR Agenda proposes to:

Fix those areas of the Dodd-Frank Act that aren't working properly;

[1] Copy of the FAR Agenda is attached as Exhibit 1.

Add those issues that weren't addressed in the Dodd-Frank Act; and

Replace those provisions of the Dodd-Frank Act that are unfixable.

The FAR Agenda is not an exhaustive list of issues and solutions, but it is a starting place for a dialogue on how to provide the American economy with the tools of capital formation needed to foster growth and job creation for the next generation.

We are pleased that the legislative proposals, which are the subject of today's hearing, are ones that are part of the FAR Agenda and ones that the Chamber supports. Let me take this opportunity to discuss those legislative proposals in greater detail.

1. **H.R. 1135, the Burdensome Data Collection Relief Act**

H.R. 1135, the "Burdensome Data Collection Relief Act,"[2] would repeal section 953(b) of the Dodd-Frank Act which requires public companies to disclose a ratio of the median compensation of all employees to the compensation of the Chief Executive Officer.

The Chamber opposed the inclusion of the pay ratio because it does not provide investors with information relevant to the long-term performance of a company, and it would force companies to spend finite resources to compute the irrelevant ratios.

Such a ratio will contribute to the clutter that has made public company disclosures increasingly irrelevant as a means of providing useful information to investors to make decisions on how to deploy capital with a reasonable expectation of return. For instance, a business that has a large hourly work force, such as a retail or fast food chain, will have a high differential in their ratio, while a Wall Street firm, where it is not uncommon for employees to make an amount comparable to the CEO; will have a much lower differential.

This ratio does not convey information on the performance of a company, the health of a company, or what the long-term prospects of a company are. Indeed, proxy advisory firms have failed miserably in determining peer groups for investors to evaluate comparable CEO compensation. If private firms have failed in this effort, it is hard to see how a government mandated ratio with no relation to investment decisions is any better.

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[2] *See* Chamber letter in support of H.R. 1135 attached as Exhibit 2.

Section 953(b) also imposes costly burdensome data collection requirements upon businesses. For businesses that operate in many nations, this would require companies to reconcile differing definitions and practices of compensation and benefits, adjust this compensation to currency fluctuations, and settle potential differences in definitions and practices as to whom employees may actually be. According to the Center On Executive Compensation, one company has estimated that it would cost $7.6 million and take 26 weeks to compile this information, and another has estimated that it would cost $2 million dollars alone to determine the actuarial benefit of pension benefits for employees. To extrapolate those costs among the 10,000 plus public companies in the United States, we could face compliance costs in excess of $1 billion dollars.

That is why the Chamber and the Center On Executive Compensation sent a letter to the Securities Exchange Commission (SEC), signed by 23 trade associations expressing concerns regarding the pay ratio provisions of the Dodd-Frank Act.[3]

Disclosure requirements that fail to convey relevant information to investors and impose costly burdens on companies are by definition immaterial and antithetical to productive capital formation, and therefore, the Chamber believes they should be repealed.

2. H.R. 1105, the Small Business Capital Access and Job Preservation Act

H.R. 1105, the "Small Business Capital Access and Job Preservation Act,"[4] would amend the Investment Advisers Act of 1940 to exempt private equity fund investment advisers from its registration and reporting requirements, provided that each private equity fund has not borrowed and does not have outstanding a principal amount exceeding twice its invested capital commitments. This bill seeks to enhance the capital formation needed to build new businesses, expand existing businesses, and create jobs.

Companies small and large, particularly new businesses, need a mix of capital sources to meet short-term and long-term growth needs. This diversity of capital has provided the liquidity needed for different sized firms to be able to have the opportunity to achieve success. Congress recognized these facts and the need to increase diverse portals of capital access in passing the bi-partisan Jumpstart Our Businesses Startups Act ("JOBS Act") last year.

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[3] Letter to SEC Chairman Mary Schapiro, dated January 19, 2012, is attached as exhibit 3.

[4] *See* Chamber letter in support of H.R. 1105 attached as exhibit 4.

The Small Business Capital Access and Job Preservation Act builds upon the JOBS Act and is itself an important innovation that will help to insure that small businesses continue to have access to diverse forms of capital formation.

Private equity financing is an important form of financing for smaller businesses that are trying to grow. In fact, between 1995 and 2010, over 23,000 companies, employing 3 million people, were backed by private capital. These firms grew jobs at a rate of 64% compared to other companies which only grew jobs at a rate of 18%.[5] It should also be noted that private equity financing was not a cause of the financial crisis and that business models utilizing private equity financing do not pose interconnected risk to the economy. Yet, the Dodd-Frank Act requires that private equity firms must register with the SEC. This places upon the private equity firms onerous reporting requirements through form PF, including the valuation of privately held portfolio companies, as well as expensive custodial requirements for untradeable legend equities.

Requirements such as these are not only costly; they are designed for public company investors, not investors in privately held companies. Thus, the requirements are also a mismatch for the investment model. The costs of these requirements may be prohibitive for smaller firms that specialize in investing in the middle markets. Therefore, the failure to pass this legislation can cut off funding sources for small businesses. This will create a cascading investment inertia that will harm smaller businesses that need assistance to grow. Such investment inertia will create adverse macro growth scenarios for the economy.

The Chamber believes that the bi-partisan Small Business Capital Access and Job Preservation Act is a measured response to preserve the role of Private Equity funding as a conduit of capital for small growing businesses.

3. H.R. 1564, the Audit Integrity and Job Protection Act

H.R. 1564, the "Audit Integrity and Job Protection Act,"[6] would prohibit the Public Company Accounting Oversight Board (PCAOB) from implementing rules requiring public companies rotate audit firms on a mandatory basis. Implementation of mandatory audit firm rotation will harm investors, endanger the competitive position of American public companies, and degrade audit quality.

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[5] Growtheeconomy.org.

[6] *See* Chamber letter in support of H.R. 1564 attached as Exhibit 5.

The PCAOB appears to have embarked on an agenda that is leading far afield from its specific, but important, mandate to regulate auditors. Mandatory audit firm rotation would reduce the supervision and oversight of the audit committee and management, rolling back strong corporate governance policies. Indeed, we must question why the government, or a quasi-government entity, should mandate which vendor a business should use.

Let's take a look at the history of the mandatory audit firm rotation debate:

- Congress, in debating Sarbanes-Oxley, explicitly declined to enact provisions requiring mandatory firm rotation;

- Congress, in passing the JOBS Act, specifically exempted emerging growth companies from being subjected to any potential rules requiring mandatory audit firm rotation;

- The General Accounting Office (GAO) has twice reviewed and rejected the need for mandatory firm rotation. The GAO noted that mandatory audit firm rotation would increase audit costs by at least 20%;

- Academic studies have demonstrated that mandatory firm rotation may harm companies through higher costs and increased incidence of undetected fraud;

- The PCAOB has failed to provide information through the inspections process demonstrating a need for mandatory firm rotation[7];

- Over 90% of commenters on the concept release have opposed the concept of mandatory firm rotation; and

- The majority of investors commenting on the concept release also opposed mandatory firm rotation.

Despite this history and almost universal opposition to mandatory firm rotation, the PCAOB continues to consider a concept release on the subject, one that has been open since August 2011. The PCAOB's failure to demonstrate how the benefits of rotation outweigh the costs or address the cogent and consistent concerns

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[7] *See* Chamber letter to PCAOB Chairman James Doty of October 5, 2012 attached as Exhibit 6 raising concerns about the PCAOB inspections process and the failure of the PCAOB to define audit failure.

raised by investors and businesses lead us to question why valuable resources, time, and monies are being spent on this project.

The Chamber believes that the PCAOB can better spend its time, effort, and resources on other projects such as updating auditing standards or developing a basic definition of audit failure. With the continued consideration of the concept release on mandatory audit firm rotation, the Chamber is concerned that the PCAOB is leaving the realm of audit regulation and crossing the threshold of regulating corporate governance, a subject area that has been left to state corporate law and the Securities Exchange Commission.

The Chamber supports independent standard setting; however, we believe that the recent proposal on mandatory firm rotation weakens audit committees, is outside the bounds of audit regulation, and enters an area outside the PCAOB's authority – corporate governance. H.R. 1564 reaffirms the line of demarcation, as established in Sarbanes-Oxley, that the PCAOB's jurisdiction is limited to that of an audit regulator, while corporate governance and executive compensation reside with the SEC, state corporate law, and boards of directors.

4. A discussion draft to amend Section 913 of the Dodd-Frank Act

Section 913 of the Dodd-Frank Act requires the SEC to study and, if necessary, develop a rulemaking to address issues surrounding the standard of care for broker-dealers and investment advisors in the dispensing of investment advice and services for retail customers. It should be noted that the Department of Labor (DOL) is engaged in a similar rulemaking under its jurisdiction.

The discussion draft presented by Representative Wagner requires the SEC to satisfy certain requirements before moving forward with any rulemakings under Section 913. Specifically, the discussion draft requires that the SEC identify the harm to retail customers due to brokers or dealers operating under different standards of conduct than those that apply to investment advisers. Furthermore, the SEC must conduct a rigorous cost-benefit analysis and determine that this analysis 1) demonstrates that the benefits of the rule justify the costs; 2) identifies and assesses alternatives to the rule and determines that the rule is the most effective path; and 3) ensures that the rule improves current regulations.

These are reasonable requirements; however, past regulatory failures justify this legislative mandate.

The D.C. Circuit Court of Appeals has repeatedly invalidated SEC rulemakings, most recently in *Business Roundtable & U.S. Chamber of Commerce v. Securities and Exchange Commission*, because of a faulty cost-benefit analysis. Systemic issues have prevented the SEC from determining the costs of a proposed regulation, what the benefits of a proposed regulation are, and if the costs outweigh the benefits. Similarly, President Obama's executive order on regulatory reform[8] requires non-independent agencies to clearly identify a problem and then to regulate, with the least burdensome impact on society, if no alternatives to regulation exist. Finally, with many joint rulemakings required under the Dodd-Frank Act, the SEC has historically been a laggard, making the joint regulatory process disjointed and uncoordinated.

In addition, the discussion draft calls for the SEC to coordinate its rulemaking on retail customer standards of conduct with other federal agencies, including the DOL, to minimize any conflicts among related regulations. We couldn't agree more. As there has been increasing overlap between the DOL and SEC in the area of retirement plans, we strongly urge these two agencies to work together to create a coordinated fiduciary standard.

Although the DOL withdrew its proposed rule in late 2011 and intends to re-propose a similar rule, the original proposed rule covered persons who are investment advisers as defined in the Investment Advisers Act of 1940. The DOL noted that this reference to the Investment Advisers Act definition also includes the various exclusions from that definition. However, an entity that is exempt under the Investment Advisers Act may still be a fiduciary under one of the other alternative definitions in the DOL regulation.

Different sets of rules and requirements applicable to the same assets will lead to additional costs and complexities for the underlying participants and account holders. This issue is further complicated to the extent that an individual may have several accounts at the same financial institution, some of which may be only subject to the SEC rules, and others of which may be subject to the new ERISA requirements as well as the SEC rules. Inconsistent rules will be confusing to investors and problematic for service providers to implement. Without coordination between the agencies, plan sponsors and plan professionals will spend significant resources unnecessarily trying to comply with two different sets of rules that are trying to reach the same goal. This situation could result in retail customers, plan participants, and beneficiaries not receiving the necessary tools and assistance necessary to achieve a

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[8] Executive Order 13563

financially sound retirement at a time when this is critically important, or only receiving such investment support at an additional cost.

In short, the Wagner discussion draft imposes common sense requirements, as the SEC Regulatory Accountability Act does, on a potential area of rulemaking of importance to retail investors and the businesses they provide capital to. Indeed, the Chamber has been disappointed with the benign neglect that the SEC has shown to retail investors who have been disenfranchised by past rulemakings. The Chamber believes that the Wagner discussion draft should be introduced and passed and requests that the Subcommittee look into other issues regarding retail shareholders, particularly the sharp decline in participation by retail shareholders in voting in director elections and shareholder proposals.

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The Chamber believes that these bills are important steps in promoting strong policies conducive to long-term economic growth and job creation. We need to have a diverse capital market system to sustain a varied set of business structures. Similarly, we must also preserve the public company structure, which is a unique and successful form of wealth creation for employees, as well as retail investors. This package of legislative proposals strikes the appropriate balance in achieving those goals.

I will be happy to take any questions that you may have.

FAR

Fix. Add. Replace.

AGENDA 2013

Ensuring Competitive Markets and Preserving Access to Capital

Center for Capital Markets Competitiveness

FAR Agenda: Ensuring Competitive Markets and Preserving Access to Capital

In 2007, the U.S. Chamber of Commerce established the Center for Capital Markets Competitiveness (CCMC) to advance America's global leadership in capital formation by supporting capital markets that are the most fair, transparent, efficient, and innovative in the world.

Economic growth and job creation are fueled by access to diverse sources of capital—from many forms of investors and credit providers. From a budding entrepreneur maxing out his credit card to start a new business to the growing company accessing the public markets to expand, every business relies on a well-functioning financial system to provide credit, liquidity, investment, and financial risk management.

Financial regulatory reform was long overdue. The U.S. financial regulatory system dates back to the reforms made after the Great Depression. Prior to the 2008 financial crisis, the CCMC called for reform with its bipartisan blueprint to modernize this outdated regulatory architecture and eliminate gaps, duplication, and regulatory dead-zones.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) sought to address some of these challenges by bringing more transparency to derivatives and improving consumer protection. And, yet, it largely left the existing byzantine regulatory structure intact—adding new layers and agencies, including the Financial Stability Oversight Council, the Consumer Financial Protection Bureau, and the Office of Financial Research. All told, 20 separate federal agencies are left with the task of implementing more than 400 Dodd-Frank rules as well as dozens of studies and reports.

Over two and a half years into Dodd-Frank implementation, the complexity and on-going duplication is challenging both regulators and the regulated. Rules requiring multiple agencies to act in coordination are either delayed, considered out of sequence, or producing outright conflicts. For example, the Commodity Futures Trading Commission (CFTC) and the prudential banking regulators have proposed fundamentally different approaches to "margining" over-the-counter swaps that non-financial companies use to hedge their risk. Because the discrepancy is based on different interpretations of Congressional intent rather than regulators moving ahead in unison, it appears that Congress will have to intervene to settle this dispute—another unnecessary delay.

An additional example: The Volker Rule has been appropriately delayed because nobody can agree on a simple definition of the problem they are trying to solve!

Faced with uncertain and conflicting rules of the road as well as skyrocketing compliance costs, financial firms are gradually making decisions that impact their ability to serve customers either by eliminating products or by getting out of certain markets altogether. And, rather than being able to invest in new ways to respond to customer needs, many financial firms are either focused almost exclusively on implementing the regulatory changes or simply waiting on the sidelines for more clarity.

It is time to take a hard look at where we stand and answer some basic questions:

- Are there areas where Dodd-Frank simply isn't working as intended or where regulators need further clarity from Congress? How do we **fix** this?
- What **add**itional steps should we take in areas that were left unaddressed in Dodd-Frank? For example, should we consolidate regulators or at a minimum ensure more effective coordination among the dozens of financial regulators?
- Are there provisions of Dodd-Frank that simply don't work and need to be **replace**d?

While there will be honest disagreements about particular provisions, almost everyone can agree that today's financial regulatory structure and oversight is still **F.A.R.** from what is needed.

In an effort to address these challenges constructively, the CCMC has prepared the following list of concerns we believe need to be addressed. The "Fix, Add, Replace (FAR)" agenda we are proposing is not an exhaustive list of all the challenges or changes needed, but it does reflect the areas that have the broadest impact on the American economy and the millions of businesses that rely on an effective capital formation system.

Legislative and Regulatory Fixes to Dodd-Frank and Beyond

As with any broad legislation, Dodd-Frank has left gaps and created unintended consequences. In addition, as regulators have scrambled to meet statutory deadlines, they have felt constrained by the rigidity of the statute in some areas or misinterpreted Congressional intent in others. And, in some cases regulators have simply created unworkable regulatory regimes. CCMC is advocating for the following statutory and regulatory **FIXES** to ensure well-functioning, robust capital markets.

CFPB: Establish Fundamental Checks and Balances

- Replace the single director leadership structure at the Consumer Financial Protection Bureau (CFPB) with a bipartisan commission to ensure continuity and a balanced approach to policymaking.
- Restore appropriate Congressional oversight by bringing the CFPB's budget within the formal appropriations process, similar to most independent agencies.
- Ensure more effective coordination with safety and soundness regulators to guarantee that CFPB regulations do not conflict with other regulations or otherwise undermine the diversity and soundness of the banking system.

Derivatives: Ensure End-Users are Able to Manage Financial Risks

- Enact legislation that would exempt non-financial end-users from onerous, costly, and unnecessary margin requirements, consistent with the Congressional intent when Dodd-Frank was passed.
- Ensure that purely internal, inter-affiliate derivatives transactions are exempt from clearing, margin, and other requirements more appropriately applied to market-facing swaps, consistent with the Congressional intent when Dodd-Frank was passed.
- Clarify that non-financial companies that use centralized treasury units to hedge risk will be eligible for the end-user clearing exception.
- Limit the extraterritorial reach of domestic derivatives regulation to ensure U.S. dealers are not disadvantaged overseas and to ensure that Main Street non-financial companies' cross-border counterparty relationships are not undermined by overlapping regulation.

FSOC: Enhance Transparency and Better Coordination among Financial Regulators

- Support efforts to increase the transparency of Financial Stability Oversight Council (FSOC) when it acts in a regulatory capacity.

- Restore appropriate Congressional oversight by bringing the Office of Financial Research's (OFR) budget within the formal appropriations process.
- Create a "regulatory conflict" window at the FSOC with the goal of streamlining and ending duplicative regulatory initiatives and structures and harmonizing conflicting regulations among agencies.
- Ensure that the OFR coordinates and streamlines data collection among agencies to prevent the duplicative collection of information.
- Safeguard the confidentiality of proprietary and consumer information gathered from data requests and examinations across all regulators.
- Prohibit final systemically important financial institution (SIFI) designations for non-bank financial companies until all systemic risk rules are finalized.
- Ensure that systemic risk regulation and orderly liquidation authority for non-bank financial companies are not bank-centric, but are tailored to the business model of a specific company to prevent policies that may cause unnecessary market disruptions.
- Reform FSOC so that the views of the agencies, and not the Chairman of agencies sitting as individuals, are represented on the Council.

Money Market Mutual Fund Reform: Preserve and Further Strengthen an Essential Liquidity Management Product for Companies, States, and Non-Profits

- Advocate that any regulatory changes to Money Market Mutual Funds (MMMFs) seek to strengthen these funds while preserving their utility to customers.
- Ensure all additional reforms effectively address clearly defined problems and conduct a thorough analysis of potential reforms to MMMFs to understand the broader economic impacts and the company specific operational impacts, notably the tax and accounting issues that would ensue from floating the Net Asset Value.
- Continue to press for the Securities and Exchange Commission (SEC) to be the primary regulator for this securities product responsible and for implementing any additional reforms.

Fiduciary Standard: Preserve Choice and Affordability for Retail Investment and Retirement Savings

- Preserve various levels of "fiduciary" standard—suitability standard, fiduciary standard of care, and ERISA fiduciary duty—so that investors have the option to determine level of service and cost of investments.
- Coordinate related fiduciary rulemakings at the SEC and Department of Labor (DOL) to avoid regulatory conflict and stakeholder confusion.
- Ensure that only plan sponsors and service providers to ERISA-based plans are subject to ERISA's fiduciary duty.

Whistleblower Regulation: Ensure Enhanced Whistleblower Programs Do Not Undermine Strong Company Compliance Programs

- Amend the SEC and CFTC's whistleblower programs to make any wrongdoer convicted of a crime ineligible for an award.
- Amend the SEC and CFTC's whistleblower program to provide consistency with Sarbanes-Oxley required compliance programs by requiring internal reporting of the alleged misconduct, either before or simultaneously reporting the information to the various Commissions.

The Unresolved

CCMC believes that to ensure our markets are the most competitive in the world and our system is better positioned to foresee the next crisis, the following must be **ADDED** to the financial regulatory agendas of the administration and Congress.

Modernize the SEC: Create a World-Class 21st Century Securities Regulator

- Develop a bold and clear plan on how to make rulemaking, supervision, inspections, and enforcement operations within SEC more effective.
- Appoint a deputy chairman to develop and implement a transformational reform plan to break down silos, develop priorities for agency action, and instill managerial accountability and discipline.
- Link increased funding and resources to timely and clear progress towards achieving the plan.
- Put in place procedures to ensure that necessary technology improvements can be effectively incorporated in furthering the SEC's mission.
- Reform hiring practices to acquire the talent needed to regulate complex markets and products.

Regulatory Streamlining and Structural Reform: Improve Regulatory Process to Consolidate or Better Coordinate Regulators

- Extend the requirements for cost-benefit analysis under Executive Orders 13563 and 13579 to all independent agencies.
- Make financial services regulatory agencies and bodies subject to the Unfunded Mandates Reform Act.
- Create systems in all financial regulatory agencies to regularly review and update existing regulations and, if necessary, sunset obsolete regulations.

- Create a post-implementation requirement for a new regulation to undergo a cost-benefit analysis 2 years after promulgation to assess the real-world costs and allow for a correction of unintended consequences.
- Streamline, rationalize, and consolidate regulatory structure by consolidating the SEC and CFTC and explore potential additional changes.

CFPB: Define New "Abusive" Standard to Enable Effective Compliance

- Require the Consumer Financial Protection Bureau (CFPB) to conduct a transparent process to define the "abusive" standard through a policy statement—similar to the statement issued by the FTC defining the Commission's "unfairness" authority.

Restore Securitization Markets

- Address issues that continue to impede the development of liquid, efficient, and well-regulated securitization markets that are critical to efficient debt financing for businesses.

Global Regulatory Coordination: Ensure International Regulatory Efforts Do Not Produce Conflicting Regulations That Are Unworkable

- Ensure greater regulatory coordination on key areas of financial regulation, such as derivatives and systemic risk to ensure a level playing field and globally compatible approaches to regulation when appropriate.
- End efforts to apply domestic regulations extraterritorially and create mechanisms to ensure effective coordination among international regulators to resolve cross-border issues.

Corporate Governance: Ensure Transparent, Evidence-Based Standard Setting

- Hold proxy advisory firms, principally Institutional Shareholder Services and Glass Lewis, to standards that move the industry towards a more accountable, transparent, and evidence-based policymaking process while eliminating core conflicts of interest.

Enfranchising Retail Investors: Make it Easier Rather than Harder for Average Investors to Vote Their Shares

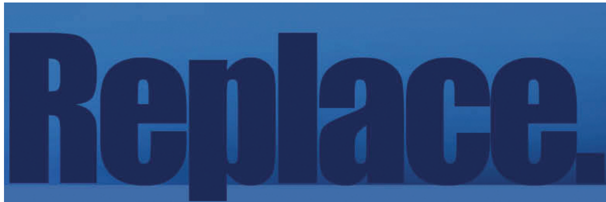
- Promote retail investor participation in proxy voting through examining possible interpretive guidance to give retail shareholders access to Client Directed Voting and greater use of enhanced broker internet platforms, and encouraging greater use of web-based communications and technology.
- Educate retail investors on the distinction between the roles and the fiduciary responsibilities of investment advisors and broker-dealers.

Financial Reporting: Further Improve Systems to Better Serve All Users of Financial Statements

- Create a consistent global standard for accounting and auditing so investors around the globe are using the same financial reporting "language" and to ensure better investment decisions can be made.
- Require the Public Company Accounting Oversight Board (PCAOB) and Financial Accounting Standards Board (FASB) to follow transparency requirements of the Administrative Procedures Act (APA) and Federal Advisory Committee Act (FACA) in developing standards and conduct cost-benefit analysis of proposed standards.
- Create a financial reporting forum made up of regulators, standard-setters, investors, and businesses to proactively identify problems within the financial reporting system and suggest solutions.

Private Sector Housing Financing: Allow the Private Sector to Return to the Housing Market

- Enact reform that will enable a robust and responsible return of the private sector to the broader housing finance market.



The Unfixable

The Center for Capital Markets Competitiveness is committed to keeping the United States as the global leader in capital formation. To accomplish this goal, some recent regulatory proposals, including a handful of provisions in Dodd-Frank that undermine rather than strengthen capital formation and well-functioning markets, need to be **REPLACED** or abandoned. CCMC believes the following issues must be resolved to ensure our competitiveness.

The Volcker Rule: The Wrong Approach

- Repeal the Volcker Rule and replace it with higher capital requirements for financial services firms that engage in proprietary trading.

Corporate Governance: Ensure Compliance Requirements Add Shareholder Value and Don't Discourage Companies from Accessing Public Markets

- Repeal Conflict Minerals and Resource Extraction rules that place costly burdens on American businesses while failing to achieve foreign policy objectives. Empower appropriate foreign policy apparatus to resolve international conflicts.

- Support appropriate corporate governance and executive compensation provisions and disclosures that promote long-term shareholder value and allow for reasonable risk-taking while replacing ones, such as CEO-Chairman and Pay-Ratio disclosures, that do little for shareholders.

Financial Reporting: Mandatory Auditor Rotation Is Unworkable

- U.S. and foreign regulators have been considering a mandatory audit firm rotation, which would reduce audit quality, diminish the role of audit committees, increase the incidence of undetected fraud, and raise costs. Regulators on both sides of the Atlantic should abandon this proposal.

Financial Transaction Tax: Stop Disincentives for Investment and Retirement Savings

- Oppose legislative and regulatory actions that would impose a tax on financial transactions, disproportionally hurting Main Street investors and the ability of businesses to raise capital.

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS®

U.S. Chamber of Commerce
1615 H Street, NW | Washington, DC 20062-2000
www.uschamber.com

January 19, 2012

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chairman Schapiro:

The undersigned organizations, institutions, and nonprofits interested in fostering entrepreneurship represent hundreds of thousands of businesses, small and large, and their professionals, from all sectors of the economy employing tens of millions of Americans. We write to you today to encourage the Securities and Exchange Commission ("SEC") to engage in expanded public outreach and consideration of alternatives before moving forward with a public release of proposed rules implementing Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We specifically recommend that the SEC:

- Hold a roundtable discussion of experts and stakeholders to better understand the potential issues and unintended consequences that may flow from the implementation of the pay ratio disclosure requirements outlined in Section 953(b);

- Consider engaging in negotiated rulemaking to ensure thorough and well-balanced input that minimizes unintended consequences;

- Follow the requirements as outlined in Executive Orders 13563 and 13579 to identify alternative approaches and choose the least burdensome means of implementing the rule;[1] and

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[1] On September 6, 2011 the SEC issued a press release stating that it would comply with the retrospective look back provisions outlines in Executive Orders 13563 and 13579. It is unclear if the SEC will abide by the prospective rulemaking requirements embodied in these Executive Orders.

- Submit the proposed rule to the Office of Information and Regulatory Affairs ("OIRA") review process to better understand the cost-benefit implications of the pay ratio disclosure requirements.

A more thorough discussion of our concerns is provided below.

Section 953(b) and Current Legislative Activities

Section 953(b) of the Dodd-Frank Act requires a new corporate disclosure stating:

1) The median of the annual total compensation of all employees of an issuer, except the Chief Executive Officer ("CEO"), as calculated in accordance with Item 402(c)(2) of Regulation S-K of the Securities Exchange Act;

2) The annual total compensation of a CEO; and

3) The ratio of the median annual compensation of all employees to the CEO compensation.

It should be noted that Section 953(b) was inserted into the Dodd-Frank Act without any hearings to discuss the matter. Representative Nan Hayworth proposed a bill, H.R. 1062, the Burdensome Data Collection Relief Act, to repeal Section 953(b) in light of the concerns noted below. H.R. 1062 was reported out of the House Financial Services Committee by a bipartisan vote and is currently awaiting action by the full House of Representatives.

Regulatory Burdens and Cost-Benefit Analysis

The corporate disclosure regime is designed to provide information that is useful to investors when making investment decisions. While it may be of general interest to some investors for much different purposes, it is unclear how the pay ratio disclosure will be material for the reasonable investor when making investment decisions. The ratio will inevitably vary widely among industries or businesses without any relevance to the financial performance of a company. Accordingly, additional consideration of any possible benefit to be provided by this disclosure must be considered in the rulemaking process and weighed against the costs discussed below.

Moreover, while compliance with the pay ratio provision may seem straightforward, there are significant hurdles and burdens faced by the business community in attempting to comply with it. In order to promulgate thoughtful rules, the undersigned Associations encourage the SEC to engage the business community in order to determine the full impact that this future rule may have on operations, budgets and corporate resources. There is a widespread misperception that this information is readily available at the touch of a button. This could not be further from the truth.[2] Investors who have taken the time to educate themselves on how companies would have to comply with the rule are beginning to understand this. Accordingly, we ask that you use your authority to host a roundtable discussion to gather information from the people that will handle the practical compliance with this rule. This roundtable discussion should be designated part of the rulemaking record.

Companies may have tens of thousands of employees stretched out over dozens of countries. This is especially the case for our country's largest companies with operations around the world. Obtaining the data will be difficult and time-consuming as the definition of compensation among countries will vary widely, and companies will face difficulties attempting to rationalize compensation with currency fluctuations.

Given the lack of discussion about the practical implications of Section 953(b) prior to its enactment, it is of utmost importance during these difficult economic times that implementing regulations are carefully and thoughtfully proposed. Furthermore, the SEC should use caution during the rulemaking process to ensure that the economic consequences do not outweigh the objectives of the rule.[3]

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[2] The sheer administrative burden to compile this data has been covered extensively in other comment letters. *See, e.g.*, Comment letter from Tim Bartl, Center On Executive Compensation, to SEC (Nov. 11, 2011). To provide an idea of the significant expenses related to this administrative burden, a member company of one of the undersigned Associations has estimated that to produce the pay ratio disclosure, it will cost roughly $7.6 million and take approximately 26 weeks. Additionally, a separate member company has been unable to produce a complete cost estimate for the pay ratio, but has estimated that determining just one component—the actuarial value of the various pension benefits its employees receive—will cost approximately $2 million annually.

[3] President Obama has acknowledged the importance of approaching regulations carefully with his January 2011 Executive Order encouraging a regulatory process that "protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation . . . [using] the least burdensome tools for achieving regulatory ends." *See* Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011); *see also* Barack Obama, "Toward a 21st-Century Regulatory System," WALL ST J. (Jan. 18, 2011).

Unlike many mandates in Dodd-Frank, Section 953(b) does not include a deadline for promulgating regulations. Since there is no statutory deadline, we strongly urge the SEC to resist rushing into proposing regulations, given the substantial cost and implementation burdens that are likely to be imposed on companies. We acknowledge that Section 953(b) is more prescriptive than many Dodd-Frank requirements, but the SEC has been afforded the time to thoroughly analyze the economic impacts different alternatives will have on the U.S. economy at large. Thus, the SEC should consider how to provide the most flexibility for the least cost and minimize the disadvantages that unnecessary regulatory expenditures like this have on American businesses.

In addition, we urge using a negotiated rulemaking process that will allow a representative group of stakeholders on a negotiated rulemaking advisory committee to join with the SEC in developing a balanced and thoughtful rule that can both minimize the burdens and achieve that congressional intent of Section 953(b).

Furthermore, submitting a proposed rule thorough OIRA review will allow for increased scrutiny to better understand the cost and benefits of the pay ratio rules and aid the SEC in choosing the least burdensome means of implementing Section 953(b). This will ensure that the best and most practical approaches can be included in a proposed rule that will balance the perceived benefit of this disclosure against the implementation costs.

Conclusion

Thank you for your consideration of our request to carefully study the impact of any potential proposed rule implementing Section 953(b) of the Dodd-Frank Act as well as our request for an SEC roundtable discussion on this issue, submission of the proposed rule for OIRA review, and for the SEC to use the negotiated rulemaking process. While we understand that Section 953(b) represents a congressional mandate, the rulemaking to implement the pay ratio provisions needs to minimize the regulatory burdens upon the business community and promote investor protection by insuring that disclosures provide relevant information useful to investors when making investment decisions.

We are happy to meet with you or your staff to discuss our concerns in greater detail and assist the SEC in meeting these goals.

Sincerely,

American Benefits Council
American Insurance Association
American Petroleum Institute
Business Roundtable
Center On Executive Compensation
Competitive Enterprise Institute
The Financial Services Roundtable
HR Policy Association
National Association of Manufacturers
National Association of Real Estate Investment Trusts
National Association of Wholesaler-Distributors
National Investor Relations Institute
National Restaurant Association
National Retail Federation
Property Casualty Insurers Association of America
The ERISA Industry Committee
The Real Estate Roundtable
Retail Industry Leaders Association
Securities Industry and Financial Markets Association
Society of Corporate Secretaries & Governance Professionals
Society for Human Resource Management
U.S. Chamber of Commerce
WorldatWork

cc: Securities and Exchange Commission:
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Daniel Gallagher, Commissioner

Securities and Exchange Commission – Division of Corporation Finance:
Ms. Meredith Cross
Mr. Lona Nallengara

Ms. Paula Dubberly
Ms. Felicia Kung
Ms. Christina Padden

United States Senate
Hon. Tim Johnson
Hon. Richard Shelby

United States House of Representatives
Hon. Spencer Bachus
Hon. Barney Frank
Hon. Scott Garrett
Hon. Maxine Waters
Hon. Nan Hayworth

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

October 5, 2012

Mr. James R. Doty
Chairman
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

Re: **Information for Audit Committees about the PCAOB Inspection Process (PCAOB Release No. 2012-003, August 1, 2012).**

Dear Chairman Doty:

The U.S. Chamber of Commerce (the "Chamber") is the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

The CCMC believes that businesses must have a strong system of internal controls and recognizes the vital role external audits play in capital formation. The Chamber has supported increased communication between the Public Company Accounting Oversight Board ("PCAOB"), the business community, as well as with audit committees. In that regard we are very appreciative of the PCAOB's proactive release of *Information for Audit Committees about the PCAOB Inspections Process* ("Release") to help facilitate communications between audit committees and their auditors.

The CCMC would like to take this opportunity to express concerns about the communication and portrayal of inspection findings and how it may undermine public confidence in financial reporting. Accordingly, the CCMC believes that the PCAOB should pursue proposals to boost public confidence in financial reporting including:

1. **Appropriately Define Audit Failure;**

2. **Facilitate PCAOB-Audit Committee-Audit Firm Dialogue;**

3. **Provide Context and Guidance on Differences in Judgment; and**

4. **Develop and Publish PCAOB Policy on Auditors Judgment**

***

PCAOB Mission

The PCAOB articulates its mission as follows:

> The PCAOB seeks to be a model regulatory organization. Using innovative and cost-effective tools, the PCAOB aims to improve audit quality, reduce the risks of auditing failures in the U.S. public securities market and promote public trust in both the financial reporting process and auditing profession.[1]

The CCMC is supportive of that mission and believes that it is an important one for efficient capital markets. Clearly, an effective inspection and compliance program is important for the PCAOB to be an effective regulator. Nevertheless, we are concerned the portrayal of inspections may be undermining public trust in financial reporting and harming the PCAOB's mission.

Definition and Use of Audit Failures

Starting in 2011, the PCAOB began to refer to Part I inspection deficiencies as audit failures. This use of the term audit failures was also included in speeches, public statements and releases. The manner and usage of the term audit failures with Part I inspection findings is contrary to the accepted definition of an audit failure. The PCAOB's current use of the term audit failure may misinform market participants as evidenced by its comparison to the definition employed by the General Accounting

[1] From the PCAOB website as of August 28, 2012.

Office in its 2003 surveys ("GAO Report") and report to Congress on the mandatory audit firm rotation concept.

The GAO report defined the term as follows:

> **"audit failure"** refers to audits for which audited financial statements filed with the SEC contained material misstatements whether due to errors or fraud, and reasonable third parties with knowledge of the relevant facts and circumstances would have concluded that the audit was not conducted in accordance with GAAS, and, therefore, the auditor failed to appropriately detect and/or deal with known material misstatements by (1) ensuring that appropriate adjustments, related disclosures, and other changes were made to the financial statements to prevent them from being materially misstated, (2) modifying the auditor's opinion on the financial statements if appropriate adjustments and other changes were not made, or (3) if warranted, resigning as the public company's auditor of record and reporting the reason for the resignation to the SEC.[2]

Therefore, a pre-condition for an audit failure is a material misstatement of the financial statements.

The use of the term has become so pervasive that the CCMC last year raised the issue that the PCAOB's use of the term audit failure was in fact not describing a failure. In commenting on the *Concept Release on Auditor Independence and Audit Firm Rotation and Notice of Roundtable* the CCMC stated:

> …the PCAOB attempts to equate Part I inspection deficiencies to audit failures, although the Concept Release acknowledges that the use of the term "audit failure" describes a situation of not obtaining (or not documenting the evidence to support) the reasonable assurance that a financial statement is free of material misstatement.

[2] GAO 04-217 *Public Accounting Firms Required Study on the Potential Effects of Mandatory Audit Firm Rotation* (2003) (pp. 6).

It does not mean that a financial statement is in fact materially misstated.[3]

So an "audit failure" as used in the Concept Release is actually not a failure per se regarding the accuracy of financial reports, but rather the identification of what the PCAOB determines to be a deficiency in the process of an audit, which itself may involve a difference of professional views as to what constitutes appropriate evidence to support reasonable assurance.[4]

It would seem that the term audit failure is being used to describe a deficiency rather than an outright failure. The facts also seem to bear this out.

An analysis of the PCAOB inspection reports of the largest audit firms shows the following:

B4 Inspection Reports

	Number of Issuer Audits			Rate for	
	Part I Findings	Inspected	Restatements	Deficiencies	Restatements
2006	29		4		
2007	29		3		
2008	20		5		
2009	37	267	2	13.9%	0.75%
2010	79	250	2	31.6%	0.80%

While the number of inspections and deficiencies rose, actual restatements in this context, or "failures" declined by 60% as compared to 2008 and declined by 83% as compared to 2004.[5]

[3] Concept Release *Concept Release on Auditor Independence and Audit Firm Rotation and Notice of Roundtable* (PCAOB Release No. 2011-006, August 16, 2011, PCAOB Rulemaking Docket Matter No. 37) Page 5.
[4] *See* letter to the PCAOB from the U.S. Chamber CCMC on *Concept Release on Auditor Independence and Audit Firm Rotation and Notice of Roundtable* (PCAOB Release No. 2011-006, August 16, 2011, PCAOB Rulemaking Docket Matter No. 37) Page 5.
[5] The 83% is based on 12 restatements from the four largest firm inspection as reported in "PCAOB Inspections and Large Accounting Firms," by B. K. Church and L. B. Shefchik in *Accounting Horizons* (March 2012, p. 52).

This steady decline of restatements is a testament to the work of the PCAOB. However, in using the term audit failure to more closely align with the definition in the GAO report the facts also illustrate that the rate and actual number of audit failures is dropping at the same time that the PCAOB is stating the opposite. Indeed proclamations that the audit failure rate is exploding is belied by the fact that the actual failure rate found in inspections is 0.8%. A mismatch between language and facts creates a distortive picture that undermines confidence in financial reporting.

Further, this low rate should be considered in light of the fact that engagements selected by the PCAOB for inspection are not a representative sample—but generally involve the firm's most risky engagements. Typically the PCAOB inspection of those most risky engagements focuses on the auditing of the most difficult or inherently uncertain areas of the financial statements.

Equating Part I inspection findings with audit failures is inconsistent with the PCAOB's own statements in other sections of inspection reports. To illustrate, the section on "Notes Concerning this Report" in the 2010 inspection reports includes the following statement:

> Board inspections encompass, among other things, whether the firm has failed to identify financial statement misstatements, including failures to comply with Securities and Exchange Commission ("SEC" or "Commission") disclosure requirements, in its audits of financial statements. This report's descriptions of any such **auditing failures** (emphasis added) necessarily involve descriptions of the apparent misstatements or disclosure departures.[6]

Audit failures as used by the PCAOB in this context recognizes that misstated financial statements (albeit ones that are materially misstated) are necessary for an audit failure.

To summarize, the current use of the term "audit failure" in conjunction with Part I inspection findings not only runs the risk of causing confusion about the quality

[6] The statement goes on to explain that the PCAOB has no authority to make binding determinations concerning whether an issuer's financial statements are misstated or fail to comply with Commission disclosure requirements. Rather, that authority rests with the SEC.

of audits but undermines confidence in the financial reporting process and the auditing profession. Thus, it contravenes the PCAOB's own vision statement. In addition, it casts doubt on the PCAOB's claim that it has been effective in improving the quality and credibility of audits.[7]

Differing Views and Use of Judgment

Other statements in the Release also contribute to undermining confidence in financial reporting by casting doubt on the veracity of audit firm responses to PCAOB inspection findings. The Release urges audit committees to view with skepticism audit firm responses to PCAOB inspection findings that say: "It was just a documentation problem;" or "There was a difference in professional judgment." While the CCMC appreciates that not all Part I deficiencies can be characterized in these terms, some of them certainly can and audit committees deserve to understand the nature of the issues involved and any difference in views between the PCAOB and the auditor on these issues. The PCAOB cannot maintain the credibility of its inspection process by silencing other views. Meritorious inspection findings should be able to stand on their own and withstand any dissenting views.

It is important to recognize that the Sarbanes-Oxley Act ("SOX") provides for differences in views and audit firms should be able to avail themselves of the processes and protections intended by SOX. Thus, the CCMC is likewise concerned with the implication articulated in the Release:

> "Whether stated or unstated in a firm's response to a draft [inspection] report, if a firm takes a position contrary to the criticism described in the public portion of a report, the matter may not end there as a matter of the Board's processes. While a firm is entitled to disagree with an inspection criticism, the substance of that disagreement can influence various Board judgments, including judgments relating to the firm's quality controls, the timing or scope of the next inspection of the firm, or the possibility of a disciplinary

[7] *See* PCAOB *Strategic Plan: Improving the Relevance and Quality of the Audit for the Protection and Benefit of Investors 2011-2015* (November 30, 2011), p. 8.

> proceeding to adjudicate the disagreement and, if determined against the firm, to impose sanctions for the failure in the inspected audit[8]

Further, the CCMC would like to point out that the PCAOB's own inspection reports for 2010 contain the following statement with respect to Part I findings and documentation that is inconsistent with the Release:

> In some cases, the conclusion that the Firm failed to perform a procedure was based on the absence of documentation and the absence of persuasive other evidence, even if the Firm claimed to have performed the procedure;

On the matter of judgment, the Release states that: "The PCAOB bases deficiency findings only on failures to obtain sufficient audit evidence, not on disagreements when reasonable judgments appear to have been made about such matters." This statement fails to appreciate that judgment is pervasive throughout an audit. In particular, judgment is essential in a number of the riskier, more complex, and difficult areas of financial reporting that the PCAOB chooses to focus on in its inspections, such as fair values and accounting estimates.

The PCAOB should also acknowledge to audit committees that Part I inspection findings involve differences in audit judgments between auditors and inspectors. Indeed, audit committees need to understand any such differences when they exist. Thus, the Release would have been more helpful if it provided guidance on how to dialogue constructively about any differences in judgment between the firm and the PCAOB inspectors on inspection findings, rather than to deny such differences can possibly exist by maintaining inspectors are right and auditors always simply wrong.

Maintaining Confidence and Public Trust

Audits are complex processes, sometimes involving large teams of people with global reach, and each of these people is required to make a large number and variety of judgments that must consider accounting, auditing, and firm guidance. Given such

[8] Release, Page 7

complex processes, it is reasonable to expect that some portion of the engagements inspected by the PCAOB would have room for improvement.

Given this perspective, it is concerning that the PCAOB uses inspection findings to broadly criticize all auditors. Essentially, inspection findings from a few engagements are used to indict the many without context. This approach is undermining public trust and confidence in both the financial reporting process and auditing profession and the PCAOB's claims that audit quality has improved.

Further, the current approach is in marked contrast to that used by the PCAOB initially in framing its inspection findings. For example, the Inspection Report Overview section of the inspection reports from the limited inspections for the largest accounting firms in 2003 included the following:

> The reports' emphasis on these criticisms, however, should not be understood to reflect any broad negative assessment. The four firms inspection in 2003 are made up of thousands of audit professionals, have developed multiple volumes of quality control policies, and perform audits for a combined total of more than 10,000 public companies. It would be a mistake to construe the Board's 2003 inspection findings as suggesting that any of these firms is incapable of providing high quality audit services.
>
> Moreover, the Board does not doubt that the bulk of the firms' audit professionals consist of skillful and dedicated accountants who strive—at times against the competing priorities of the large and complex business of the firms—to make audit quality their top priority. The Board is encouraged by the increasing tendency of persons at the highest levels of the firms to speak of the need for a renewed commitment to audit quality as the firm's top priority. The Board is also encouraged by the firms' recognition of the value of the Board's inspection process. The Board will continue to use its inspection authority to focus the firms on aspects of their practice that may stand as an impediment to the highest quality audit performance.

Given that the PCAOB maintains that audit quality has improved over the last decade, these statements by the PCAOB should be truer today. Providing context such as this for PCAOB inspection findings would go a long way towards maintaining public trust and confidence in the quality of auditing, the financial reporting process and the auditing profession.

Proposals to Facilitate Audit Committee Understanding and Improve Public Confidence

The CCMC believes that the following proposals can resolve these concerns, facilitate audit committee understanding of the inspections process and findings and promote public trust in financial reporting.

1. **Define Audit Failure**: The PCAOB should define audit failure so that it is known with certainty by capital market participants what is meant by the term. This will allay any confusion. Such a definition should include a material misstatement as a precondition of an audit failure.

2. **Facilitate PCAOB-Audit Committee-Audit Firm Dialogue**: To promote the information available to audit committees, PCAOB inspectors should engage in a 3-way dialogue with audit committees and audit firm personnel before completing fieldwork on an inspection. This should be done if the inspection team has any concerns about the audit that are expected to result in Part I findings and it should be noted that audit committee members have called for such a dialogue.

3. **Provide Context and Guidance on Differences in Judgment**: Guidance should be give to audit committees on how to understand and engage in constructive dialogue about any differences in judgment between the firm and the PCAOB inspectors on inspection findings. The inspection findings should also give the context of those differences.

4. **PCAOB Policy on Auditors Judgment**: The Final Report of the Advisory Committee on Improvements to Financial Reporting to the U.S. Securities and Exchange Commission ("CIFIR") included a recommendation that the PCAOB develop a statement of policy articulating how it evaluates the

reasonableness of auditing judgment and include factors that it considers when making this evaluation.[9] This will provide auditors and audit committees with certainty of how and when judgment may be exercised. Such a policy will also provide additional context for a difference of views and a better understanding of any Part 1 findings.

Conclusion

The CCMC believes that effective and fair regulators are a necessity for efficient capital markets. While we have concerns that the loose use of the term audit failure undermines public confidence in financial reporting harming capital markets, we believe that the proposals outlined in this letter can reverse that trend and promote effective audit regulation.

Thank you for your consideration of these views and we are happy to meet with you to discuss these views further.

Sincerely,

Tom Quaadman

Cc: Lewis Ferguson, Public Company Accounting Oversight Board
Jeanette Franzel, Public Company Accounting Oversight Board
Jay Hanson, Public Company Accounting Oversight Board
Steven Harris, Public Company Accounting Oversight Board
Paul Beswick, Chief Accountant, Securities and Exchange Commission
Brian Corteau, Deputy Chief Accountant, Securities and Exchange Commission

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[9] Recommendation 3.5 of the CIFIR report found on pages 13-14.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

May 20, 2013

The Honorable Bill Huizenga
U.S. House of Representatives
Washington, DC 20515

The Honorable Scott Garrett
U.S. House of Representatives
Washington, DC 20515

Dear Reps. Huizenga and Garrett:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, thanks you for introducing H.R. 1135, the "Burdensome Data Collection Relief Act."

This bill would repeal section 953(b) of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requiring businesses to disclose a ratio of the median compensation of all employees to the compensation of the Chief Executive Officer.

The Chamber believes the pay ratio does not provide investors with information relevant to the long-term performance of a company. Section 953(b) also imposes costly, burdensome data collection requirements upon businesses. It requires companies that operate in multiple nations to reconcile differing definitions and practices of compensation. According to the Center On Executive Compensation, one company has estimated that it would cost $7.6 million and take 26 weeks to compile this information, and another has estimated that it would cost $2 million dollars to determine the actuarial benefit of pension benefits for employees alone.

Disclosure requirements that fail to convey relevant information to investors and impose costly burdens on companies are by definition immaterial and antithetical to productive capital formation.

The Chamber strongly supports H.R. 1135 and looks forward to working with you on this important issue.

Sincerely,

R. Bruce Josten

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

March 12, 2013

The Honorable Robert Hurt
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hurt:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, thanks you for reintroducing the "Small Business Capital Access and Job Preservation Act."

This bill would amend the Investment Advisers Act of 1940 to exempt private equity fund investment advisers from registration and reporting requirements, provided that each private equity fund has not borrowed, and does not have outstanding, a principal amount exceeding twice its invested capital commitments. This bill would enhance capital formation opportunities to build new businesses, expand existing businesses, and create jobs.

Companies small and large, particularly new businesses, need a mix of capital sources to meet short-term and long-term growth needs. Diversity of capital has provided the liquidity needed for different sized firms to achieve success. The Small Business Capital Access and Job Preservation Act is an important legislation that would help insure that small businesses continue to have access to diverse forms of capital formation.

The Chamber supports the Small Business Capital Access and Job Preservation Act and looks forward to working with you on this important issue.

Sincerely,

R. Bruce Josten

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

April 8, 2013

The Honorable Robert Hurt
U.S. House of Representatives
Washington, DC 20515

The Honorable Gregory W. Meeks
U.S. House of Representatives
Washington, DC 20515

Dear Representatives Hurt and Meeks:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, supports strong corporate governance and financial reporting policy and thanks you for introducing the Audit Integrity and Job Protection Act.

The Chamber strongly supports this bill, which would ban mandatory audit firm rotation. Implementation of mandatory audit firm rotation would harm investors, endanger the competitive position of American public companies, and degrade audit quality. The General Accounting Office has estimated that mandatory audit firm rotation could increase audit costs by as much as twenty percent. Also, academic research indicates that the costs of audit firm rotation would outweigh the benefits since fraudulent financial reporting is more likely to occur within the first three years of an audit-client relationship and there is no evidence that fraud is more likely with longer audit tenure. Indeed, mandatory audit firm rotation would reduce the supervision and oversight of the audit committee and management, rolling back strong corporate governance policies.

The Securities and Exchange Commission and Congress have rejected mandatory audit firm rotation in the past, and last year, with the passage of the Jumpstart our Businesses Startups Act ("JOBS Act"), Congress explicitly banned firm rotation for emerging growth companies.

The Chamber strongly supports the Audit Integrity and Job Protection Act and looks forward to working with you on this important issue.

Sincerely,

R. Bruce Josten