Strengthening U.S. Capital Markets

A Challenge for All Americans

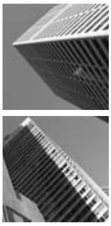
March 2008

Center for Capital Markets Competitiveness

Strengthening U.S. Capital Markets

A CHALLENGE FOR ALL AMERICANS

CENTER FOR CAPITAL MARKETS COMPETITIVENESS



One of the most urgent yet least understood competitive challenges facing the United States is the continued global leadership of America's capital markets. The problems that began last year in the subprime mortgage markets and quickly spread to the credit markets and across our economy are just the latest stark reminder that capital markets don't matter just to Wall Street.

Every company—large or small, public or private—needs capital. New ideas, innovations, and jobs must have financing to take root and grow. Individuals, too, rely on capital markets. A clear majority of families now invest in our markets, depending more than ever on them to fund retirement, college tuition, and a high quality of life. The capital markets are also a source of well-paying jobs for the millions of Americans who work in the financial services industry.

In short, the continued success of U.S. capital markets is as important to Main Street as it is to Wall Street. Every citizen, family, and business has a critical stake in ensuring that our nation is home to the strongest, fairest, and most efficient markets in the world.

Yet today our leadership in this area is slipping. Our competitive edge has dulled, and we must take immediate action if we are to get it back. The challenges facing our markets are compelling. We have refused to modernize the oversight systems that were created more than 70 years ago. We have piled on senseless and contradictory regulations that no one can understand. We have added exorbitant costs to transactions. And still our gigantic regulatory bureaucracy was unable to detect and avert the subprime crisis and its reverberations through our economy.

We have permitted a handful of class action lawyers to extort investors through the threat of frivolous lawsuits. We have allowed special interest

investors to misuse and abuse our legal and regulatory process to advance political or social agendas at the expense of all investors.

We have seriously confused genuine fraud with legitimate risk taking. In the name of protecting investors from fraud, which we *must* do, we are foolishly attempting to drive all risk from our markets.

In addition to these domestic challenges, we face robust global competition from overseas markets. The reality is that America is no longer the sole capital markets superpower. Fortunately, there is widespread recognition that our capital markets are losing their edge. A report by the Chamber of Commerce's bipartisan Commission on the Regulation of Capital Markets in the 21st Century and complementary reports and studies by the Committee on Capital Market Regulation, New York Mayor Michael Bloomberg and U.S. Senator Charles Schumer (D-NY), and the Financial Services Roundtable have all documented the seriousness of the declining competitive position of the U.S. capital markets.

We have made some progress in addressing these challenges. In 2007, accounting and auditing reforms, including a more cost-effective implementation of the Sarbanes-Oxley Act, were implemented. Proxy access efforts that would have further empowered special interests at the expense of ordinary investors were beaten back. The U.S. Supreme Court's decision in Stoneridge delivered a blow to abusive securities class action lawsuits. The Chamber played a role in these positive developments through strong advocacy before the legislative and regulatory branches of the government, in the courts, and in the court of public opinion.

There have also been setbacks. The subprime financial crisis has lent credence to the view that every market downturn or business failure must necessarily produce a plethora of new regulations and lawsuits rather than

the thoughtful and prudent regulatory reform that the Chamber and others advocate.

The Chamber has organized itself to be a strong advocate for sensible capital markets reform. We are absolutely committed to a sustained, well-funded, and broad-based campaign to ensure that the U.S. capital markets are the most attractive in the world.

Leading the Chamber's effort is the newly established **Center for Capital Markets Competitiveness (CCMC)**, which has hired an expert staff and attracted an outstanding voluntary board of business leaders chaired by Richard H. Murray, chief claims strategist at Swiss Re. Building on the Chamber's proven record in this arena, the center has developed an aggressive, four-part action plan to drive the modernization of our financial system in 2008 and beyond:

- Establish a modern and coherent regulatory structure.
- Restore fairness to legal, regulatory, and enforcement processes.
- Implement a global corporate financial reporting model.
- Promote innovation and the long-term interests of all investors.

The pages that follow outline specific strategies and actions we have identified to achieve these critical goals. I urge you to review our plans and visit our website (www.centerforcapitalmarkets.com) to learn how you can support our efforts and contribute your own perspectives and ideas.

Treasury Secretary Henry M. Paulson, Jr., recently stated: "Truly competitive capital markets must inspire investor confidence. When it comes to regulation, balance is key. The right regulatory balance should marry high standards of integrity and accountability with a strong foundation for innovation, growth, and competitiveness."

The Chamber strongly supports these views, and we are prepared and committed to play a major leadership role. Our mission always has been—and remains—to help create American jobs, expand prosperity, and reward success. Competitive and efficient capital markets—overseen by a modern, coherent, and balanced financial regulatory system—are critical to the success of that mission.

Thomas J. Donohue
President & CEO
U.S. Chamber of Commerce
March 2008

Strong U.S. Capital Markets Power Our Innovation Economy

Strong, vibrant, and competitive capital markets in the United States are vital to every entrepreneur, business owner, and company in America. And, they are just as important to investors and consumers as they are to businesses.

By capital markets, we mean the vast array of financial products and services upon which our economy depends—debt and equities securities, mutual funds, commodities and derivative products, credit and banking products, and insurance.

Properly functioning capital markets drive economic activity and expansion and ensure the efficient operation of our businesses and economy in a globally competitive marketplace. They do this by:

- Connecting those with capital to those who need it
- Developing products and services for managing financial risk
- Providing investors access to diverse investment opportunities

But, when our capital markets operate less than optimally, the impact on our economy can run wide, deep, and long. The subprime crisis that began in 2007 and has since spread to our credit markets, the broader real estate market, and other important sectors of our economy is just the latest example of this.

> "U.S. capital markets are the lifeblood of our economy."
>
> —U.S. Treasury Secretary Henry M. Paulson, Washington, D.C., Conference on U.S. Financial Competitiveness, March 13, 2007.

The Need for Capital. Businesses—whether big or small, public or private—and individuals depend on the healthy functioning of our capital markets every day.

- **Capitalizing businesses.** From the entrepreneur working out of her home to the large multinational corporation, every business needs capital to grow, launch new products, and expand its service offerings.
- **Saving for the future.** Investors of all ages depend on capital markets for everything from buying a first home to funding college tuition and retirement.
- **Facilitating economic activity.** Businesses and consumers alike rely on financial markets to process hundreds of millions of transactions daily at the local, national, and international levels.
- **Managing risk.** Businesses, families, and individuals across America use a wide range of financial and insurance products to protect against and manage many types of risk.

"To maintain and enhance the value of U.S. public markets, we must do a better job of assessing and evaluating the benefits and costs of our legal and regulatory system and strengthen the rights of shareholders."

—R. Glenn Hubbard and John L. Thornton, "Action Plan for Capital Markets," *Wall Street Journal*, November 30, 2006.

"Effective regulation and the competitiveness of U.S. financial markets and firms are vital to consumers, capital formation, job creation, and economic growth."

—Financial Services Roundtable,
The Blueprint for U.S. Financial Competitiveness, November 2007.

The Chamber's goals and strategies detailed later in this report are designed to support dynamic and robust capital markets. If the United States is to compete successfully in the 21st century, then it must continue to have the fairest, most efficient, and most attractive capital markets anywhere in the world.

Sustained success over the past 50 years is no guarantee of future success. The United States' continued global leadership in finance and capital markets is jeopardized by our complacency. The Chamber will challenge this complacency with a strategy to ensure that American leadership and preeminence in global financial markets continues.

"All Americans have a vested interest in strengthening America's financial services industry, and the time has come to rally support for this effort."

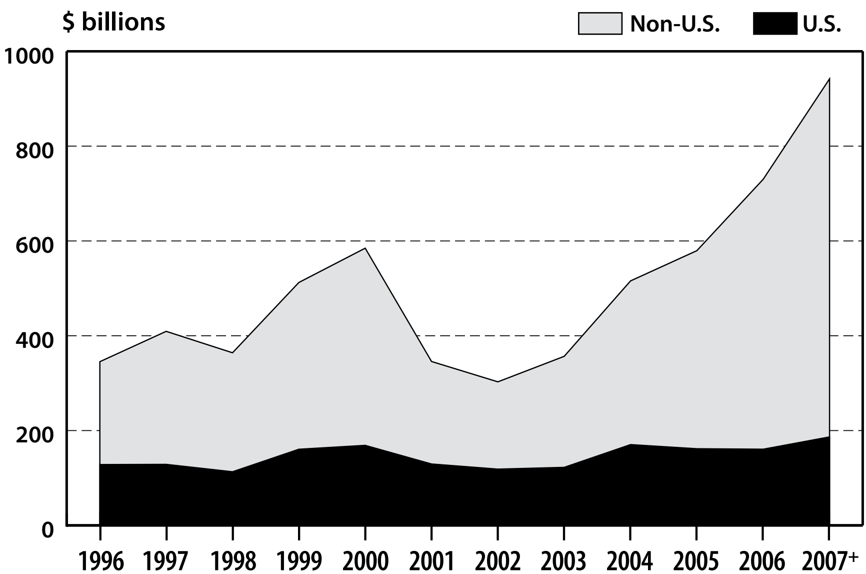
—New York Mayor Michael R. Bloomberg and U.S. Senator Charles E. Schumer,
Sustaining New York's and the U.S.' Global Financial Services Leadership, January 2007.

U.S. Capital Markets Face Stiff Global Competition and Domestic Challenges

The U.S. capital markets remain the largest and deepest globally, but their preeminence is being challenged by a combination of external and internal factors. For example, the United States' share of global equity raised has declined significantly over the past decade (Exhibit 1). As a nation, we must acknowledge this reality and other similar facts and act accordingly—and promptly.

Exhibit 1*

Equity Raised in U.S. and Non-U.S. Public Markets



* Committee on Capital Markets Regulation and Thomson SDC Platinum
\+ Projection based on data through September 2007

> "The U.S. public capital markets play a vital role in the U.S. economy. . . . The competitiveness of the U.S. economy and the global economic leadership of the United States depend on the strength of these markets."
>
> —Committee on Capital Market Regulation, *Interim Report*, November 30, 2006.

External Forces. For many decades, U.S. policymakers encouraged other countries to develop and open their financial markets. These countries' success in doing so has created stiffer competition in the global marketplace. This, by and large, is a positive development. Greater competition creates greater access to a wider range of products and services and lowers the cost of capital for U.S. businesses and investors.

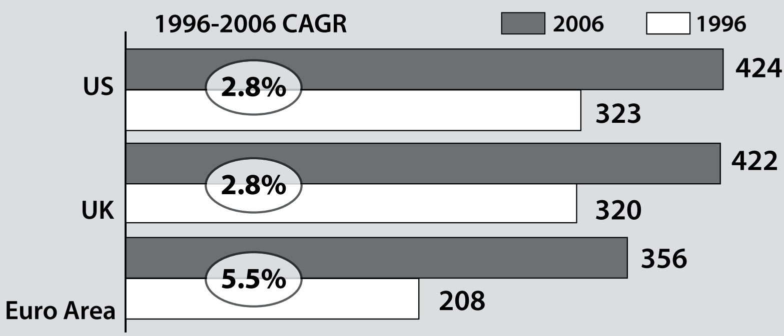
> "Over the past two decades, markets have truly become global—corporations, accounting firms, investment banking firms, law firms, and now stock exchanges—all have internationalized. Yet, the U.S. regulatory structure is deeply rooted in the reforms put in place in the 1930s, a period that is closer in time to the Civil War than is to today."
>
> —Commission on the Regulation of U.S. Capital Markets in the 21st Century, U.S. Chamber of Commerce, *Report and Recommendations*, March 2007.

External Forces at Work

- **Faster-growing markets.** Though the U.S. capital markets are still the deepest in the world, those in the Eurozone are growing twice as fast, at an almost 6% 10-year compound annual growth rate (CAGR), compared to only a 3% 10-year CAGR for the United States—according to the most recent report by the McKinsey Global Institute (Exhibit 2).

Exhibit 2*

Financial depth by region | Stock of financial assets as % GDP



* Mapping Global Capital Markets Fourth Annual Report and McKinsey Global Institute Global Financial Stock Database

- **Geographic freedom.** With advances in technology, businesses and financial services are no longer bound by physical constraints tied to specific geographic locations, and, as a result, many capital market activities are moving overseas to more attractive, less costly investment and regulatory regimes.
- **Fierce regulatory competition.** Quality financial market regulatory regimes from London to Dubai to Zurich have been designed and built for today's contemporary marketplace and are competing aggressively to capture a greater share of the world's financial pie.
- **More favorable tax regimes.** The uncompetitive U.S. tax regime, which ranks 76th worldwide for efficiency and effectiveness, according to a World Bank/ PricewaterhouseCoopers study, undermines U.S. competitiveness, capital formation, and job creation.

Internal Forces. The U.S. capital markets are hampered by a litigation system run amok, an outdated and burdensome financial services regulatory structure, and accounting and tax policies that increasingly are out of sync with a truly global economy.

Consider, for example, that our principal securities laws were put in place in the 1930s and early 1940s—a period closer in time to the Civil War than to today. This is not at all to say there have not been changes over the years. But almost all the changes have been incremental, with one regulation more or less glommed on to the next. And, when there has been significant or revolutionary change, it has almost always been in response to a crisis, which is typically not when the most visionary thinking occurs.

So today, our financial services regulatory structure more closely resembles a Rube Goldberg contraption than it does a system designed to protect investors and promote capital formation.

The missed opportunities to avert the 2007 subprime crisis exposed once again fundamental weaknesses of our incoherent regulatory system. Our obsolete regulatory structure failed to move quickly enough to identify and address the problem. And our economy is going to pay the price.

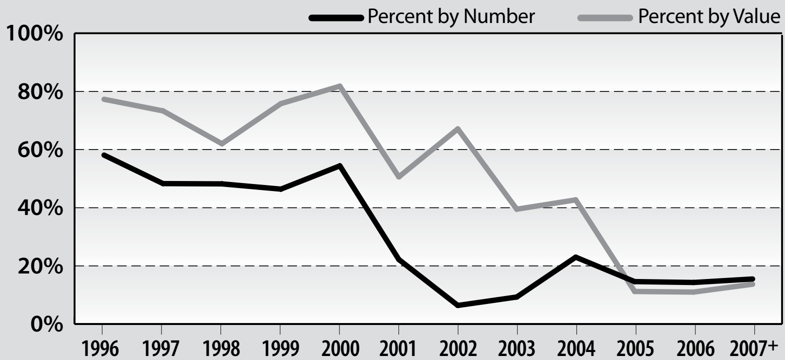
> "Overseas firms with no other exposure to our securities laws could be deterred from doing business here. . . . This in turn may raise the cost of being a publicly traded company under our law and shift securities offerings away from domestic capital markets."
>
> —U.S. Supreme Court Justice Anthony M. Kennedy, *Stoneridge case*

Internal Threats and Challenges at Work

- **Excessive litigation risks.** According to all the recent major reports, the U.S. legal environment encourages litigation that undercuts U.S. competitiveness, which in turn threatens economic activity and job creation (Exhibit 3).

Exhibit 3*

Share of Global IPOs (Narrowly Defined) Captured by U.S. Exchanges



* Committee on Capital Markets Regulation and Dealogic
+ 2007 data through September

- **Outdated regulatory structure.** While financial services firms have become more integrated to serve the dynamic needs of their domestic and international customers, the federal and state regulatory regimes for banking, securities, and insurance remain uncoordinated and structured for the old business model. The resulting overlap and complexity adds unnecessary cost, delays new product approvals, and undermines prompt, effective, and efficient oversight.
- **Excessive emphasis on enforcement and lack of due process.** Far too often, political agendas emphasize after-the-fact enforcement actions at the expense of preventative compliance programs. Overreaching enforcement often ignores the fundamental principles of fairness, balance, and due process.
- **High taxes.** As competing financial markets are lowering their taxes, the crushing tax burden on U.S. corporations, small businesses, partnerships, and investors thwarts higher levels of savings and capital formation, greater economic activity, and more jobs.

All these challenges are real and immediate and directly affect every company that requires capital to compete and thrive in the global economy, as well as investors and families who depend on a wide range of financial products and services to build wealth and retirement security.

So, what are the solutions to these challenges?

While there is little we can or should do to stop external market forces, the CCMC's goals and strategies outlined in this report presume that we can take charge of our own destiny and that we should act now to manage these threats before it is too late. We need to reverse the unintended consequences and costs of our current legal and regulatory systems and make them supportive of a fair, balanced, and efficient financial marketplace today and in the future. Both end users and suppliers of capital will benefit greatly if we act constructively. If we do not, we run the very real risk of relinquishing our global leadership to more aggressive countries and financial centers.

The risk, however, is that the subprime crisis of 2007 will lend credence to the view that every market downturn or business failure must necessarily produce a plethora of new regulations and lawsuits rather than the thoughtful and prudent regulatory reform the Chamber and many others advocate. The need is not *more* regulation, but *more coherent* regulation.

> "Unless we improve our corporate climate, we risk allowing New York to lose its pre-eminence in the global financial services sector. This would be devastating for both our city and nation."
>
> —New York Mayor Michael R. Bloomberg and U.S. Senator Charles E. Schumer, *Wall Street Journal*, November 1, 2006.

Chamber Initiatives Gain Momentum in 2007

In 2007, the U.S. Chamber was at the center of a critical momentum shift in the public policy debate over how to increase the competitiveness of the U.S. capital markets. Below are some of the highlights.

Capital Markets Commission. After a year of careful study and debate, the U.S. Chamber's Commission on the Regulation of U.S. Capital Markets in the 21st Century issued its report in March 2007. Its recommendations were wide ranging and included modernizing America's approach to financial regulation, giving the Securities and Exchange Commission (SEC) greater flexibility over the implementation of the Sarbanes-Oxley Act, convincing public companies to end the practice of providing quarterly earnings guidance, and ensuring the viability of the public audit profession.

First Competitiveness Summit. Concurrent with the release of the commission's report in March 2007, the U.S. Chamber held its first annual Summit on Capital Markets Competitiveness, attended by hundreds of public officials, senior executives, entrepreneurs, and experts.

> "Policymakers and thought leaders [must] address these problems now before a crisis arises. We have it within our power to take sensible, effective steps to ensure that U.S. markets are the most fair, efficient, transparent, and attractive in the world. The question is, can we find the political will to take them."
>
> —Commission on the Regulation of U.S. Capital Markets in the 21st Century, U.S. Chamber of Commerce, *Report and Recommendations*, March 2007.

Center for Capital Markets Competitiveness. The Chamber launched CCMC, which institutionalizes the organization's commitment to enhancing the competitiveness of the capital markets and expanding the innovation economy.

Building Industry Consensus for Reform. Working with groups such as the Financial Services Roundtable, the Financial Services Forum, the Securities Industry and Financial Markets Association, the Investment Company Institute, the Business Roundtable, and the Committee on Capital Markets Regulation, the Chamber and CCMC played a significant leadership role in harnessing industrywide support for improving the capital markets.

2007 Achievements. In addition, in 2007 the Chamber made progress on a number of specific initiatives.

- **Defeating SEC's Special Interest Shareholder Access Proposals**

  In 2007, the SEC proposed two contrary rules regarding shareholder access to the company proxy in connection with director elections. The first proposal would have reversed the SEC's long-standing policy against providing access. The second proposal was to adopt a rule to formalize the SEC's long-standing policy against providing access.

> "In fact, the [Bloomberg-Schumer] report contains a chilling fact that if we do nothing, we will remain a leading regional financial center, but we will no longer be the financial capital of the world."
>
> —New York Mayor Michael R. Bloomberg and U.S. Senator Charles E. Schumer, *Sustaining New York's and the U.S. Global Financial Services Leadership*, January 2007.

Consistent with its previous positions on this issue, the U.S. Chamber strongly opposed expanding access and supported the long-standing, well-established, and well-understood policy of prohibiting access. Allowing shareholders access to the company proxy would enable special interest groups to advance their narrow political agendas at the expense of the majority of shareholders. The Chamber expressed its views in comment letters to the SEC and through participation on an SEC roundtable. In November 2007, the SEC agreed with the Chamber's position and adopted the rule reaffirming its long-held policy on proxy access. Since then, the SEC has sided with companies by granting "no action" requests when shareholders have filed proxy access proposals.

On a related issue, in September 2007 the Chamber wrote to the U.S. Department of Labor arguing that a shareholder activism campaign launched by the AFL-CIO was in violation of its fiduciary duties under ERISA. The Department of Labor's Employee Benefits Standards Administration (EBSA) agreed with the Chamber, issuing an Advisory Opinion Letter prohibiting union pension funds from engaging in politically motivated proxy activity.

- **Thwarting Abusive Securities Litigation**

The Chamber's Institute for Legal Reform (ILR) is examining securities class action litigation—both the economics of litigation and the rules for litigating cases—with the long-term goal of reform. ILR has worked to build an academic consensus around the problem and to highlight the

"The United States needs to act now to maintain its leadership role in financial services globally."

—Financial Services Roundtable,
The Blueprint for U.S. Financial Competitiveness, November 2007.

issue in the media. It has conducted groundbreaking economic research in this area, drafted white papers on the topic, and supported legislation that would address plaintiff shopping, kickback schemes, and other abuses.

ILR also provides guidance to the Chamber's National Chamber Litigation Center (NCLC) in selecting securities cases for appeal and for presentation to the U.S. Supreme Court. Along with NCLC, it achieved a notable legal victory in Stoneridge Investment Partners v. Scientific-Atlanta, Inc., a case in which the Supreme Court acted to halt the expansion of securities liability in cases brought by private parties under a novel theory called "scheme liability."

- **Supporting Attorney-Client and Work Product Privileges**

The Chamber supports all fair and constitutional efforts to enforce the laws of our country and seeks fair, efficient, and balanced approaches to enforcement and regulation. However, it does not support—and indeed is fighting—tactics by government prosecutors that amount to trampling on the due process rights of individuals and companies.

A cornerstone principle of the U.S. legal system is a steadfast respect for the due process rights of individuals and the companies and other organizations that employ them. Chief among these rights is the

> "The size and frequency of damage settlements in securities class-action suits . . . sets the U.S. apart from other major financial centers and is an important factor in the declining competitive position of our securities markets."
>
> —R. Glenn Hubbard and John L. Thornton, "Action Plan for Capital Market," *Wall Street Journal*, November 30, 2006.

attorney-client privilege. In recent years, however, agency enforcement attorneys have been using a variety of overly aggressive tactics to, in effect, force companies to waive their attorney-client privilege.

To attack this problem, the Chamber teamed up with a wide range of interested parties to form the Coalition to Preserve the Attorney-Client Privilege. Through the coalition, the Chamber has made significant progress, from substantial revisions to the U.S. sentencing guidelines to revisions to Department of Justice guidelines. This progress, however, is not enough. To expand these successes, the Chamber helped win passage in the U.S. House of Representatives of H.R. 3013, the Attorney-Client Privilege Protection Act of 2007, and is working with the coalition to achieve the same result in the Senate by aggressively working to pass a companion bill, S. 186.

This legislation would prohibit government agencies across the board from seeking waiver of the attorney-client privilege as a condition for being deemed cooperative with an investigation, ensuring that individuals and companies can exercise their fundamental right to consult freely with legal counsel without government retribution. These bills would also prohibit the government from denying an employee's right to counsel through the practice of penalizing employers that pay the legal fees of their employees who find themselves targets of government investigations.

- **Supporting Global Accounting and Auditing Standards and Mutual Recognition**

The Chamber strongly advocates that the United States move as quickly as possible in adopting global accounting and auditing standards. In September 2007, CCMC filed a comment letter with the SEC supporting a proposal to allow foreign companies listed in the United States to use International Financial Reporting Standards (IFRS) without having

to reconcile their financial statements to U.S. Generally Accepted Accounting Principles (GAAP). CCMC also submitted a comment letter in support of allowing U.S. companies to use IFRS instead of GAAP.

CCMC also strongly supports the efforts of the SEC's committee, the Advisory Committee on Improvements to Financial Reporting (CIFiR), to address the overly complex nature of U.S. accounting rules. It has already presented some very promising preliminary recommendations and is scheduled to release final recommendations in summer 2008.

- **Improving Sarbanes-Oxley Section 404**

  The Chamber and other groups convinced the SEC and Public Company Accounting Oversight Board (PCAOB) to improve implementation of Section 404 of the Sarbanes-Oxley Act to reduce cost burdens and unintended consequences without weakening internal financial controls.

  In December 2007, just weeks after the release of a Chamber study showing the disproportionate burden of Section 404 on small business, SEC Chairman Christopher Cox announced his support for exempting small businesses from Section 404(b) for an additional year.

In summary, 2007 was a very important year and, in many respects, a turning point. There were notable successes and accomplishments but also setbacks, challenges, and reminders that the problems we face run wide and deep and will not be solved without a concerted, long-term commitment.

Among the setbacks in 2007 was the emergence of the subprime crisis, which has strained our economy and hurt businesses, investors, and, most important, homeowners. The impact will reverberate for many years and is yet another illustration of the fundamental weakness of our incoherent regulatory structure. The response to this crisis, however, cannot be *more* regulation. Rather, we must accept the challenge and recognize the opportunity to achieve *better* regulation.

Although there were distinct negatives for our financial markets and economy flowing from the subprime crisis, it is another urgent wake-up call for common, positive actions to reform our legal system and modernize our regulatory environment. Achieving this reform is critical to enhance the U.S. competitive position in global financial markets.

Building upon the accomplishments and setbacks of 2007, the Chamber has a strategy and action plan for 2008 and beyond. This plan addresses both short-term market conditions and long-term competiveness issues, starting with better, more efficient, and more effective regulation; respect for legal due process; and securities litigation and enforcement reforms.

> "In the same spirit embodied in President Reagan's exhortation at the Berlin Wall, we must tear down the artificial and counterproductive barriers that define the current U.S. financial services regulatory structure so that the U.S. can participate fully, and maintain its leadership position, in the world's capital and financial markets."
>
> —Former SEC Chairman Harvey L. Pitt, "Tear Down This Wall," *Compliance Week*, December 15, 2007.

The Chamber's Goals and Strategy for Action in 2008

The Chamber's CCMC has an aggressive four-part strategy to spur entrepreneurship and innovation, empower businesses and investors, enhance the global competitiveness of the U.S. capital markets, strengthen the U.S. economy, and create more jobs. We stand ready to work with the Department of the Treasury, Congress, financial regulators, other likeminded trade associations, and all interested parties to achieve what is in our common interest. Where appropriate, we will support the efforts of others to advance our four stated goals.

To achieve these important goals, the Chamber has deployed a full array of resources to leverage and support the good work of others. We are engaged in discussion with a wide range of policymakers and other stakeholders on the issues and the best means to achieving meaningful, visionary, and long-term change.

We are conducting further research, collecting case studies, and drafting white papers on targeted topics. We will continue pushing—and in some cases drafting—legislation to address our priorities. We will continue to convene industry meetings and roundtables to better understand the problems and hammer out the details of the solutions.

And we will certainly continue our aggressive effort to shape proposed regulations and file amicus briefs in important court cases. In short, we will do all that it takes to achieve the following goals.

1. Establish a modern and coherent capital markets regulatory structure.

- Develop a national regulatory vision.
- Reform financial regulatory structure.
- Establish principles-based regulation and prudential oversight and enforcement.

Like all great institutions, U.S. financial services regulation must adapt to changes in the business environment. Failure to do so will undermine the United States' long-term competitiveness and relevancy in global capital markets.

- **Develop a national regulatory vision.** The United States lacks a coherent strategy for financial services regulation. Put simply, we need to develop a national vision for financial services regulation with an international perspective. Development of this vision should be based on three mutually reinforcing principles:
  - Ensuring the protection of retail consumers and investors
  - Protecting systemic integrity and the safety, soundness, and stability of financial institutions
  - Promoting capital formation, competitiveness, and the reasonable availability of credit
- **Reform financial regulatory structure.** We also know that the U.S. capital markets infrastructure has serious structural problems, including too many regulatory agencies. Despite the best intentions, individual regulators often work at cross-purposes. Worse, they create confusion—not clarity—for businesses and investors alike.

To address these problems, we must adopt a modern, coherent, and adaptive regulatory regime for all U.S. financial services. This means consolidating financial services regulatory agencies with similar or overlapping responsibility and rationalizing boundaries between and among federal and state financial regulators. It also means establishing a formal coordinating mechanism among regulators and creating a process that will ensure a more unified approach to addressing international regulatory issues.

- **Establish principles-based regulation and prudential oversight and enforcement**. Instead of the current rigid, rules-based system, we need a more flexible system where sound and broad principles guide the development and implementation of cost-effective rules. This should be coupled with a more prudential approach to oversight and enforcement. Recognizing the ever-evolving nature of our markets, both principles and rules should be subject to a transparent, regular review process that includes opportunity for public comment.

These issues are a primary focus of the Department of the Treasury's regulatory blueprint study. In 2008, we will work with Treasury and all interested parties to modernize the current U.S. regulatory structure into one that is commensurate with its role and responsibility as the global financial markets leader. Building on the work of the Department of the Treasury and other leading stakeholders, the Chamber will host a Financial Services Constitutional Convention, assembling national and international thought leaders to develop and advance a strategy and detailed action plan for the rational and coherent overhaul of financial regulation in the United States.

2. Restore fairness to legal, regulatory, and enforcement processes.

- Protect constitutional and due process rights of individuals and companies.
- Challenge overreaching enforcement tactics and retroactive reinterpretation of rules.
- Support long-term securities reform.

Legal, regulatory, and enforcement processes in the United States must be fair, balanced, and predictable. As has been the case historically, the United States should strive for processes that are considered best practices by global standards and support the role of the United States as a leader in competitive world financial markets. To get there, the Chamber will work to:

- **Protect constitutional and due process rights of individuals and companies.** The Chamber will continue its leadership role in restoring the government's respect for the constitutional right of attorney-client privilege and the right to counsel. This means preventing the government from pressuring companies to waive these rights on behalf of themselves or their employees or penalizing them for exercising them. Senate passage and enactment of the Attorney-Client Privilege Protection Act will be a high priority for the Chamber in 2008.

- **Challenge overreaching enforcement tactics and retroactive reinterpretation of rules.** Proper balance and perspective needs to be restored to enforcement proceedings, and overlapping and duplicative enforcement efforts should be eliminated. Through various tactics, the Chamber will take steps in:

  - Eliminating rulemaking through enforcement actions and restoring respect for the administrative process

- Improving financial services regulatory agency enforcement and oversight processes
- Except in the case of actual criminal enterprises, ending criminal penalties against corporations, the costs of which are ultimately borne by innocent shareholders

- **Support long-term securities reform.** As all the independent competitiveness reports have clearly stated, securities litigation reform is urgently needed to maintain U.S. competiveness in global capital markets. The Chamber's Institute for Legal Reform (ILR) will continue exposing and challenging the abusive and often illegal tactics of trial lawyers.

3. Implement a global corporate financial reporting model.

- Pursue global accounting and auditing practices that will be reasonably applied and consistently enforced.
- Ensure the long-term viability of global audit functions and the client-auditor relationship.
- Achieve readability, reliability, and comparability of financial statement disclosure.

Truly integrated global capital markets increasingly demand integrated global accounting and auditing standards. While most of the world is quickly moving in this direction, the United States, though making some progress, remains behind the curve. The Chamber will work to narrow that gap by efforts to:

- **Pursue global accounting and auditing practices that will be reasonably applied and consistently enforced.** IFRS is the preferred global accounting standard and already is heavily relied upon by U.S. investors and companies that participate in the global markets. To ensure that the United States remains a strong voice in the development of these standards, the Chamber will take every opportunity to push policymakers to ensure effective and timely adoption of IFRS in the United States.

  Additionally, though the Financial Accounting Standards Board (FASB) is the primary standard-setting body for U.S. GAAP, the SEC has the ultimate responsibility for standard setting. To ensure a more transparent process and to reduce the need for unnecessary, costly, and disruptive restatements, the Chamber will closely monitor the SEC's activities. Specifically, it will work to ensure that the agency respects the full public notice and comment requirements of the Administrative Procedures Act (APA) and ends the practice of "Speech GAAP"—that is, adopting significant changes in public company reporting requirements through staff speeches and interpretations.

- **Ensure the long-term viability of global audit functions and the client-auditor relationship.** Both U.S. and global capital markets are greatly exposed to a twin risk: concentration among public company auditors and audit firm exposure to extreme catastrophic litigation. In 2008, the Chamber will work with its public company and audit firm members and policymakers to identify meaningful and sustainable solutions, including safe harbors for certain defined auditing practices, limitations on liability in certain circumstances, development of new business models for audit firms, and establishment of an optional national charter for multinational public company audit firms with national oversight.

- **Achieve readability, reliability, and comparability of financial statement disclosure.** There is an urgent need for more reliable and user-friendly financial information, especially for investors. Most business transactions are simple and easily accounted for, but many are complex and require the use of estimates and professional judgment in their accounting. Policymakers need to realize that detailed and complex accounting rules more often than not only complicate matters. To combat this problem, the Chamber will educate the SEC, PCAOB, Congress, and others through comment letters, roundtables, and other necessary means. We will also continue to support the positive work coming from the SEC's committee studying accounting complexity.

4. Expand and enhance opportunities for wealth creation and retirement security for every American investor.

- Protect and promote the innovation economy and provide reasonable access to global investments.
- Challenge self-serving tactics by third parties used in pursuit of "protecting investors."
- Promote regulatory, tax, and corporate policies for long-term shareholder value.

An innovative, competitive, and market-oriented economy is in the best interests of all investors and consumers. To enhance wealth creation and provide greater retirement security for all Americans, including the 77 million baby boomers entering retirement, the Chamber will pursue the following strategy through speeches, congressional testimony, comment letters, and research:

- **Protect and promote the innovation economy and provide reasonable access to global investments.** In addition to litigation, regulatory, and tax reform, it is critical that the United States pursue capital markets policies that stimulate our innovation economy and ensure fair access to global investment opportunities for all Americans. Such policies include:
    - Defining less protectionism and fewer unnecessary regulatory burdens as being in the interest of long-term investors
    - Encouraging risk-taking activities by companies engaged in long-term value creation
    - Reducing short-term thinking by ending the practice of quarterly earnings guidance
    - Adopting a policy of "mutual recognition" for broker dealers and exchanges registered in jurisdictions with rules and regulatory oversight substantially comparable to those of the United States
    - Maintaining the long-standing, well-tested, and well-understood proxy access rules that permit companies to exclude special interest shareholder proposals relating to director elections
- **Challenge self-serving tactics by third parties used in pursuit of "protecting investors."** The notion that the "protection of investors" means all investors has been vital to the success of the U.S. capital markets over the past 70 years. In recent years, however, this notion has been cleverly hijacked by special interest groups—most notably trial lawyers—who pursue their own narrow interests, ostensibly in the name of "protecting investors."

  A related problem is that corporate governance rating agencies (also know as "proxy advisory firms") are being manipulated to serve as enablers for these special interest groups. The activities, practices, and structures of these corporate governance rating agencies need reform. First, their processes need to be more transparent and, in some cases, reined in. Second, there should be public oversight of the rating agencies to identify potential conflicts of interest and to mitigate, if not eliminate, these conflicts. Finally, the de facto public policies that are established by these organizations must be subject to public notice and comment and should not conflict with the jurisdiction of the SEC and other regulators.

- **Promote regulatory, tax, and corporate policies for long-term shareholder value.** The U.S. Chamber will promote tax policies that are pro-capital formation and globally competitive. Through research, congressional testimony, and public comments, the Chamber will pursue a host of policies and statutory changes to promote greater long-term shareholder value.

Summary

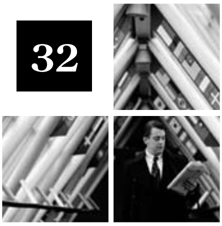
Competitive capital markets are vital to the U.S. economy. Every American business, investor, and consumer depends on our capital markets for their livelihood and financial security.

Today, U.S. financial markets are being challenged by a variety of forces. Some are external global market forces that we cannot control. But others are internal forces that we can and should control—if we can muster the political will do to so. Although 2007 saw some progress in the areas of financial reporting and disclosure, Sarbanes-Oxley Act implementation, and abusive litigation, we continued to experience long-standing as well as more recent challenges, including the subprime financial crisis that has spread throughout both the United States and global capital markets.

Fundamental reforms are required immediately. Global market forces will not wait for the U.S. financial regulatory and litigation systems to catch up. Our position as the world's preeminent financial market is at risk if we do not act now.

Building on its accomplishments in 2007, the Chamber has developed an ambitious yet achievable program for 2008 and beyond that we are rededicating today. We will work to achieve:

- A modern and coherent regulatory structure
- Fair legal, regulatory, and enforcement processes
- A global corporate financial reporting model
- An innovation economy and capital markets that protect the long-term interests of all investors



The Chamber stands ready to work with all parties to achieve these goals. Some naysayers will use lingering subprime market issues and the pending 2008 presidential election as an excuse to do nothing. We believe, however, that the right time to act is now—before our competitiveness slips further. As a nation, we need and deserve affordable capital that only exists with a modern and efficient regulatory system and a fair and balanced legal system.

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

U.S. Chamber of Commerce
Center for Capital Markets Competitiveness
1615 H Street, NW, Washington, DC 20062
TEL 202.463.3162 | FAX 202.463.3129

www.uschamber.com/ccmc

13957