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Committee on Capital Markets Regulation Offers Its Views On Six “Critical Points” in Reconciling Financial Reform Bills

Flexibility in Emergencies; Broader Market Role in Ratings; Stand-Alone Consumer Agency; No “Systemically Important” Label and No Blanket Business Bans

Washington, June 14, 2010—The Committee on Capital Markets Regulation (CCMR), an independent, non-partisan research organization and active participant in the national discussion of financial regulatory reform, has sent congressional leaders a letter urging them to consider its positions on six “critical points” as they begin the final task of reconciling the bills passed by the House and the Senate.

“The Committee is focused here on the principles of regulatory flexibility, free market valuation and independence,” said Hal S. Scott, President and Director of the Committee, and Professor at Harvard Law School.

“Embracing those principles will assure effective financial reform that strengthens U.S. capital markets, already the world’s deepest and most liquid,” Prof. Scott continued. “But reform built on business activity bans, labels creating moral hazard and arbitrary ratios would gravely risk a series of fresh financial crises over the long term.”

The Committee’s 13 page letter addresses:

- **Emergency Measures:** The House bill is favored over the Senate’s because it provides more independence of the Fed and does not require advance court approval for appointing the FDIC as receiver—which preserves the regulatory ability to act quickly and decisively in an emergency.” But the Committee “opposes both bills’ proposed modifications to the treatment of secured creditors during liquidation of systemically important financial firms.”
- **Credit Ratings Agencies:** The Committee favors the provision of the House bill abolishing ratings agencies’ exclusive exemption from Regulation FD, and the “automatic government reliance” on their ratings, since these steps would allow the market to play a broader role in evaluating the risk of various credit instruments. However it opposes the Senate bill’s provision of lower pleading standards for plaintiffs suing the ratings agencies and the House bill’s adoption of a tougher liability rule (it believes these agencies “should be subject to the same liability standards as other participants in the capital markets”). It also opposes an amendment to the Senate bill giving a new Board the power “to randomly assign issuers to ratings agencies.”
- **Consumer Protection Agency:** The Committee favors the House bill establishing an independent consumer protection agency, calling it “preferable to the Senate approach of

placing this function in the Fed, the only purpose of which is to give the Bureau a claim on Fed profits.”

- **“Systemically Important” Labels:** The Committee “favors eliminating the moral hazard and competitive distortions that will arise from branding banking organizations as systemically important” and so it “favors the Senate approach of giving the Fed jurisdiction over banking institutions with \$50 billion or more in assets (currently 36) rather than the House approach of giving the Fed jurisdiction over ‘systemically important banks’.” However, it opposes the Senate bill’s amendment applying bank capital requirements to systemically important nonbank financial institutions, which the Committee notes “raise different types of risks.”
- **Blanket Bans of Business Activities:** The Committee “is concerned about the provisions in the Senate bill that provide for a blanket ban on proprietary trading and sponsoring hedge or private equity funds” and “prefers the House bill approach, which vests the necessary discretion in regulators to curtail a broader set of bank activities on a case by case basis.”
- **Derivatives:** The Committee “opposes the Lincoln Amendment to the Senate bill that would prohibit swaps entities from borrowing from the Federal Reserve or benefiting from FDIC guarantees during a crisis” because it “effectively prohibits banks from hedging their risks through using derivatives, and is inconsistent with other parts of the Senate bill.”

The Committee’s full letter can be found online at its Web site: <http://www.capmktreg.org/>

The Committee on Capital Market Regulation is a non-profit, non-partisan group of independent U.S. business, financial, investor and corporate governance, legal, accounting and academic leaders. It began work in 2006 studying and reporting on ways to improve the regulation and global competitiveness of the U.S. capital markets.

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