

COMMITTEE ON CAPITAL MARKETS REGULATION

October 6, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Retrospective Review of Existing Regulations (SEC Release Nos. 33-9257; 34-65262; 39-2479; IA-3271; IC-29781; File No. S7-36-11)

Dear Ms. Murphy:

The Committee on Capital Markets Regulation (Committee) appreciates the opportunity to comment on the Retrospective Review of Existing Regulations (Retrospective Review) by the Securities and Exchange Commission (SEC).

Since 2005, the Committee, composed of 32 members, has been dedicated to improving the regulation of U.S. capital markets. Our research has provided an independent and empirical foundation for public policy. In May 2009, the Committee released a comprehensive report entitled *The Global Financial Crisis: A Plan for Regulatory Reform*, which contains fifty-seven recommendations for making the U.S. financial regulatory structure more integrated, more effective, and more protective of investors in the wake of the financial crisis of 2008.¹ Since then, the Committee has continued to make recommendations for regulatory reform of major areas of the U.S. financial system.

We applaud the SEC's efforts to develop a plan for ongoing retrospective review and updates of its regulations to reflect market developments and changes to the regulatory landscape. We note that the Commission annually reviews each of its rules that has become final within the past ten years,² and would suggest that this annual review, or at least a bi-annual review, also be applied to all final rules.

We believe the SEC's retrospective review should focus on a cost benefit analysis of existing rules, and whether these rules "will promote efficiency, competition and capital formation."³ In prioritizing rules for review, those rules that the SEC believes, based on existing information, generally offer a low benefit relative to their cost should be the first priority for the SEC. We note that, particularly in light of the recent decision of the U.S. Court of Appeals for the D.C. Circuit striking down the SEC's proxy access

¹ COMM. ON CAPITAL MKTS. REG., *THE GLOBAL FINANCIAL CRISIS: A PLAN FOR REGULATORY REFORM* (May 2009), <http://www.capmksreg.org/research.html>.

² Retrospective Review of Existing Regulations, 76 Fed. Reg. 56,128 (Sept. 12, 2011).

³ 15 U.S.C. § 78c(f) (2006) (SEC).

rule,⁴ adequate cost-benefit analysis is critical if final rules are to withstand challenge in the courts.⁵

In conducting its retrospective review, the SEC should identify and review all available data, including any empirical data regarding the costs and benefits of each rule it reviews. Furthermore, to the extent the SEC identifies additional information that could be useful to its review but which is not currently available to the SEC, the SEC should collect this information (including, e.g., through surveys, studies, etc.).

We acknowledge that a detailed, thoughtful review of existing regulation will be time-consuming and potentially costly. Conducting this analysis may require that the SEC hire additional staff, including economists, consultants, and other subject matter experts. We would support additional funding for the SEC to hire such staff, which we believe is instrumental in the review of regulation and potential reform. In addition, the Committee would be pleased to offer our insights and expertise as a resource to the SEC as it conducts its review.

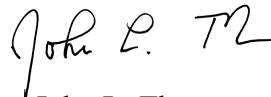
We believe the SEC's public outreach to date is commendable, and encourage the SEC to continue involving the public in its rulemaking process.

Thank you for considering our comments. Please do not hesitate to contact us at (617) 384-5364 if we can be of any further assistance.

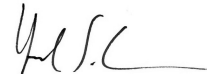
Respectfully submitted,



R. Glenn Hubbard
Co-CHAIR



John L. Thornton
Co-CHAIR



Hal S. Scott
DIRECTOR

⁴ Business Roundtable v. S.E.C., 647 F.3d 1144 (D.C. Cir. 2011).

⁵ See Comm. on Capital Mkts. Reg., Statement About a Decision by the U.S. Court of Appeals on Proxy Access (July 27, 2011), <http://www.capmksreg.org/comments.html>.