MEMO# 22279

February 28, 2008

Institute Submission to Senate Republican Capital Markets Task Force Regarding Review of U.S. Financial Markets

[22279]

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TO: ACCOUNTING/TREASURERS MEMBERS No. 5-08
CLOSED-END INVESTMENT COMPANY MEMBERS No. 5-08
COMPLIANCE MEMBERS No. 6-08
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ETF COMMITTEE No. 1-08
EQUITY MARKETS ADVISORY COMMITTEE No. 10-08
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INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 3-08
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TAX MEMBERS No. 3-08
TECHNOLOGY COMMITTEE No. 3-08
UNIT INVESTMENT TRUST MEMBERS No. 3-08 RE: INSTITUTE SUBMISSION TO SENATE REPUBLICAN CAPITAL MARKETS TASK FORCE REGARDING REVIEW OF U.S. FINANCIAL MARKETS

The Institute has filed a submission with the Senate Republican Capital Markets Task Force in connection with its review of the U.S. financial markets and global competitiveness. The submission, a copy of which is attached, is in response to a letter from the Task Force addressed to a select group of trade organizations and securities and commodities exchanges. The letter asks each organization to outline its top five legislative and regulatory recommendations that Congress should promote to ensure the competitiveness of the United States in the global financial services marketplace.

Our recommendations mirror those recently submitted by the Institute to the Treasury Department in response to their examination of the U.S. financial markets. [1] Our recommendations follow from several basic principles that should govern reforms of our regulatory structure to assure that the U.S. capital markets remain robustly competitive in the service of investors and issuers alike: first, products and services offered and sold in a national market demand a coherent scheme of national regulation; second, if U.S. financial institutions are to succeed against global competitors, U.S. regulators must encourage and permit innovation; and third, our traditional regulatory organization and approach, especially for purposes of securities regulation, must be reformed in light of changed market realities.

Our most significant recommendations are summarized below.

- Preserve the regulatory efficiencies Congress intended in passing the "National Securities Markets Improvement Act of 1996" ("NSMIA") by ensuring that registered funds offered and sold in a national market are subject to a coherent scheme of national regulation
    - Congress should direct the U.S. Securities and Exchange Commission ("SEC") to assert its authority under NSMIA as the sole regulatory standard setter for registered funds, to implement the pre-emptive purpose of that statute and secure the regulatory efficiencies Congress intended.
- Develop an additional form of U.S. registered fund to compete in the global marketplace
    - Congress and the Administration -- in consultation with the SEC, all elements of the fund industry (including fund directors), and other interested parties -- should develop legislation to authorize an additional form of U.S. registered fund that would be a competitive, attractive investment option for the global marketplace.
- Ensure that regulatory costs are proportionate to their benefits
    - The SEC should reorganize its rulemaking process, and the role within that process of its Office of Economic Analysis, to institutionalize a rigorous, timely and informed process for analyzing the costs and benefits of all regulatory proposals.
    - Congress by law, or the SEC by rule, should require that all self-regulatory organizations ("SROs") perform a similar cost-benefit analysis prior to submitting regulatory proposals to the SEC.
    - The SEC as well as SROs should establish a process for reexamining existing rules, or at least those rules that they or industry participants identify as imposing unjustifiable costs or competitive burdens.
- Adopt a more prudential model of regulation
    - The SEC should modify its regulatory processes and procedures and more

broadly apply a prudential regulatory approach to all firms, large and small.
    - Congress should ensure that the SEC has adequate resources to fund necessary levels of staffing and training to effectively implement a prudential regulatory program.
- Reform our traditional regulatory organization and approach, especially for purposes of securities regulation, in light of changed market realities
    - Reorganize the SEC to improve oversight and rulemaking
        - The SEC should realign its organizational structure to more accurately reflect the contours of the current capital markets.
    - Restructure the SEC's inspection and examination functions
        - Responsibility for the SEC's inspection and examination functions should be returned to the SEC's operating divisions.
        - All SEC inspections of a firm should be centrally coordinated, including the information requested, legal interpretations by the examiners, and the feedback provided to firms.
        - The SEC should limit its use of "sweep examinations" to unusual situations and be required to provide prompt feedback to a firm following an examination. Such feedback should be both consistent among the various SEC regional offices and SEC headquarters, and be provided in writing upon a firm's request.

Ari Burstein
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Attachment

endnotes

[1] See Letter and submission from Paul Schott Stevens, President and CEO, Investment Company Institute, to The Honorable Henry M. Paulson, Jr., Secretary, U.S. Department of the Treasury, Dec. 7, 2007, available on the Institute's website at http://www.ici.org/policy/comments/07_treas_reg_structure_com.