



CENTER FOR CAPITAL MARKETS  
C O M P E T I T I V E N E S S

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The Honorable Paul R. Verkuil  
Chairman  
Administrative Conference of the United States  
1120 20<sup>th</sup> Street, NW  
Suite 706 South  
Washington, DC 20036

Dear Chairman Verkuil:

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, believes that effective regulators are needed to ensure the safety and soundness of the financial markets. In 2007, the U.S. Chamber established the Center on Capital Markets Competitiveness (CCMC) to advocate for the replacement of the existing early-20<sup>th</sup> century era regulatory structure, with one to effectively regulate a globally competitive 21<sup>st</sup> century economy.

We understand that the Administrative Conference of the United States (ACUS) is currently studying the role of cost-benefit analysis in regulations generally and its application to the regulation of financial services. Attached you will find a copy of a report the CCMC released last month entitled, ***The Importance of Cost-Benefit Analysis in Financial Regulation***.

For over three decades—under both Democratic and Republican administrations—cost-benefit analysis has been a fundamental component of effective regulation. Not only do history and policy justify the use of cost-benefit analysis in financial regulation, but the law requires its use. In a trio of decisions culminating in its much-publicized 2011 decision in *Business Roundtable and U.S. Chamber of Commerce v. SEC*, the D.C. Circuit interpreted the statutes governing the Securities and Exchange Commission (SEC) to require the agency to consider the costs and benefits of a proposed regulation and held that the SEC's failure to perform this analysis violates the Administrative Procedure Act. However, of the 192 final and proposed rules issued

under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), nearly 60% do not include cost-benefit or quantitative analysis.<sup>1</sup>

Some aspects of the report that may be of particular interest to ACUS as it studies cost-benefit analysis include the following observations:

- **Financial regulators have a statutory requirement to perform a cost-benefit analysis when writing regulations;**
- **The Courts, Inspector General reports and General Accounting Office reports have found that financial regulators are either ignoring these requirements or performing inadequate cost-benefit analysis; and**
- **All financial regulators should use a broader, wider and more rigorous application of cost-benefit analysis to ground proposals in facts, ensure they achieve the desired benefits, and better understand the possible costs and consequences that may result from their actions.**

Indeed, the use of cost-benefit analysis in financial services regulation can and should lead to smarter regulation. It is no more difficult to use these studies in financial services than in other forms of federal rulemaking. One way to improve this type of analysis is to shift responsibility for cost-benefit analysis from lawyers to the economists.

The Chamber believes that the CCMC's report provides a roadmap for U.S. financial regulators to achieve their mission to promote the safety and soundness of our capital markets. Such fair and efficient markets combined with reasonable investor and consumer protections will help to spur economic growth and job creation. We hope that ACUS will consider this report in its deliberations and look forward to discussing these issues with you further.

Sincerely,



Tom Quaadman

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<sup>1</sup> See Committee on Capital Markets Regulation review of Dodd-Frank regulations.