CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

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Commissioner Jonathan Hill
European Commission
Directorate-General for Financial Stability,
Financial Services, and Capital Markets Union
SPA2 03/071
1049 Brussels
Belgium

Dear Commissioner Hill:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. The Chamber has recently established its Global Risk and Governance Initiative ("GRGI") to promote modern and appropriate international structures for capital formation, risk management, and corporate governance needed by businesses to fully function in a 21st century global economy. GRGI believes that the development of liquid, deep, and efficient international capital markets is critical to advancing these objectives.

We appreciate the opportunity to comment on the European Commission's Green Paper (the "Green Paper") for a Capital Markets Union ("CMU"). Members of the Chamber operate in all Member States of the European Union ("EU"), and the release of the Green Paper is a key opportunity for stakeholders to provide input on this important initiative. In particular, the Chamber believes that key issues include diversifying investment opportunities for all companies, enhancing the role of market-based financing, and, ultimately, attracting more investment into the EU. Measures to promote capital formation for businesses of all sizes should also be an early priority of the CMU. Tackling these issues will reduce market fragmentation throughout the EU and link potential sources of investment with growth opportunities for businesses of all sizes. We discuss these issues in further detail below.

Moreover, as part of our long-term efforts to promote the integration of transatlantic capital markets, the Chamber has recently released the report *International Financial Markets: A Diverse System is the Key to Commerce*. The paper, written by Dr. Anjan Thakor, John E. Simon Professor of Finance and PhD Program Director at the Washington University in St. Louis Olin School of Business, describes how businesses use international capital markets to manage and raise funds and suggests steps to facilitate investment and growth. A copy of the report is included with this submission.

Our response first provides background on the importance of a resilient and integrated global financial system and then discusses our views on priorities for early action, improving access to finance, developing and diversifying the supply of funding, and improving market effectiveness. We also recognize that the EU must shape its policies to fit the financing needs necessary to drive long-term economic growth conducive to the structure of the EU economy.

Background

According to the World Bank, global Gross Domestic Product ("GDP") has grown from $71.83 trillion in 2012 to approximately $74.91 trillion in 2013.[1] With that growth, financial systems throughout the world are becoming more interconnected, particularly as an increasing share of global economic activity takes place across borders. However, the degree to which the global financial system facilitates growth is largely dependent on its ability to facilitate the flow of capital.

Importantly, interconnected financial markets foster global economic growth both directly, by facilitating trade flows, and indirectly, by increasing investor returns that then enable investors to increase their demand for goods and services, thus contributing further to economic growth. As discussed in more detail in the report produced by Professor Thakor, the global financial system helps spur economic growth by: (1) creating money and money-like claims; (2) facilitating specialization and promoting trade; (3) facilitating risk management; (4) mobilizing resources globally and thereby improving the effectiveness with which local challenges are met; (5) obtaining

[1] *See* World Bank Indicators Database, World Bank Little Data Book 22, September 2014.

information for the evaluation of business and individuals and allocating capital; and (6) increasing the set of financing opportunities available to companies, entrepreneurs, and individuals to participate in and contribute to global economic growth.

The global financial market system and the role of markets in the allocation of capital is a critical element in driving global economic growth. Studies have shown that market-dominated financial systems—in which commercial and investment banks are functionally separated—tend to produce more financial innovation than bank-based financial systems.[2] Examples of such innovations are options, futures, swaps, securitisation, mutual funds, and exchange-traded funds, many of which were developed in the U.S. and are now broadly used throughout the world. These innovations help individuals and institutions better manage risk, avail themselves of lower capital costs, make investments they would otherwise not have made, and grow.

The global financial system is also a key method of mobilizing resources for innovation, obtaining information for the evaluation of businesses and allocation of capital, and increasing opportunities for companies, entrepreneurs, and individuals. The depth and liquidity of the global financial market help companies reduce their cost of capital and improve access to funds, thereby facilitating investment and growth. Thus, better-developed global financial markets spur entrepreneurship, investment, employment growth, and a continued rise in GDP.

We welcome that the European Commission shares these goals as expressed in the Green Paper. As has been the case in the United States, the EU has considered these issues for several decades. More recently, the lack of jobs and growth has been cited as the key systemic risk facing the EU today.[3] In the United States, the Chamber has been committed to supporting legislation and other initiatives that enhance capital formation for businesses of all sizes, leading to more jobs, growth, and economic productivity. We believe that the United States' experience with capital formation may be helpful to the Commission as it develops its priorities for the CMU.

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[2] *See* Levine, Ross, and Sara Zervos, "Stock Markets and Economic Growth," American Economic Review 88(3), June 1988, pp. 537–558.

[3] *See* Commissioner Hill, "The Capital Markets Union: breaking down the barriers to completing the single market," (Apr. 17, 2015), *available at* http://europa.eu/rapid/press-release_SPEECH-15-4796_fr.htm

Thus, with the goal of promoting a diversified, interconnected, deep, and liquid global financial system, we submit our comments on the Green Paper for your consideration. Our comments provide recommendations for the further development of a single, integrated capital market across the EU, offering examples from the U.S. experience with capital markets where helpful. We are committed to being a constructive partner as you achieve the goal of establishing a CMU.

Discussion

A. Priorities for Early Action

1. Capital Formation

The Chamber strongly believes that measures to promote capital formation and lowering barriers to accessing capital markets should be early goals for the CMU. In this respect, we agree that a thorough review of the Prospectus Directive is an important early initiative for CMU. In particular, the Commission's focus on establishing a proportionate prospectus regime and lowering costs for SMEs and smaller companies parallels similar efforts in the U.S.[4] In the U.S., the Chamber has strongly supported disclosure reform for smaller public reporting companies through the Jumpstart Our Business Startups ("JOBS") Act, which eases burdens associated with raising capital in the public and private markets. The JOBS Act may provide the Commission with helpful examples of recent steps t to promote the growth of small- and medium-sized companies.

For example, the JOBS Act created a new category of issuers, known as an emerging growth company ("EGC"), which is defined as a business with total annual gross revenues of less than $1 billion during its most recently completed fiscal year. The JOBS Act exempts EGCs from certain filing and disclosure requirements that are unduly burdensome and were found to be preventing many companies from proceeding with initial public offerings ("IPOs"). These reforms have significantly contributed to enhance smaller companies' access to equity financing. One study has

[4] We will be following up with our comments to the Prospectus Directive consultation paper separately.

found that, since the passage of the JOBS Act in 2012 to June 30, 2014, 206 of the 244 companies filing for IPOs qualified as EGCs, leading to a more robust IPO market and an uptick in economic activity.[5]

The JOBS Act has also provided EGCs with more opportunities to meet with qualified investors to gauge their interest in an offering before and after filing a registration statement to go public. Such communications - commonly known as "testing the waters" - enable an EGC to reach more sophisticated individual and institutional investors at a key point in the EGC's transition from being a privately held company to being publically traded. In addition, rules relating to research reports and broker-dealer analyst interactions with potential investors have also been updated to permit more opportunities for coverage and investor education on potential investment opportunities.

The JOBS Act has also updated existing rules relating to private offerings. Under new Regulation A+, private securities offerings of $50 million (up from $5 million) within a twelve month period may now be made without triggering a requirement to register the offering with the SEC. While these rules have only recently been finalized, we expect there to be significant interest in new Regulation A+ offerings going forward, helping early-stage companies raise funds from a variety of investors.

The U.S. Congress is continuing to consider additional initiatives to further ease regulatory burdens and challenges associated with capital formation in a potential "JOBS Act 2.0" package. These initiatives include facilitating follow-on offerings made by EGCs, reducing the number of days before a business may commence a "road show" with potential investors, and moving forward with initiatives to eliminate outdated, duplicative, or unnecessary disclosure requirements for EGCs and other small issuers. We also support Congress' proposal to increase employee retention and ownership by updating rules relating to offering securities to employees through employee compensation plans. We believe this opportunity will produce benefits for

[5] *See* Carlos Berdejo, *Going Public After the JOBS Act*, 76 Ohio St. L.J. ___, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423683

American private businesses, as well as workers who will have increased opportunity to build wealth by investing in the companies for which they work.

In sum, the JOBS Act has been a successful and important initiative by Congress to help spur capital formation for small and medium-sized companies in both the private and public markets. The Commission should consider whether similar reforms should be adopted in the EU in the context of providing access to finance for SMEs and medium-sized businesses.

2. Securitisation

We support the Commission's early goal of reinvigorating Europe's securitisation market. Broadly, the Commission's consultation paper outlines a framework for the development of a high-quality securitisation market through "qualifying securitisations," which will be standardized and differentiated on the basis of the risk features of the underlying assets. We support the alignment of interests among borrowers, issuers, and investors within the securitisation chain, and the removal of risk retention requirements for qualifying investors. However, we believe that more instruments should be eligible as qualifying securitisations, particularly with respect to short-term securitised debt issued by SMEs. We have had similar concerns in the U.S. with respect to the implementation of risk retention requirements under section 941 of the Dodd-Frank Act and the treatment of collateralized loan obligations. Capital requirements for purchasers of securitised loans also remains a concern on both sides of the Atlantic and we hope that the Commission will take this opportunity to revisit such requirements in the context of qualifying securitisations and more broadly.

3. Private Placements and Offerings

We support the efforts by groups such as the Pan-European Private Placement Working Group to identify and promote best practices for private placement structures and documentation. The U.S. financial regulatory system has historically supported private placements through "safe harbor" exemptions, such as through Section 4(2) or Rule 144A under the Securities Act of 1933. According to one survey, close to $56 billion in financing was raised in the U.S. last year through private placements.[6]

However, efforts in this area should extend to both private placements of debt and equity (e.g., private offerings). Although we are aware that the U.S. and Europe have historically diverged in terms of demand for risk capital, we believe that the Commission should explore how to support methods of providing equity capital to SMEs and other medium-sized companies in order to promote the diversity of financing sources. Possible steps could include raising the threshold of the total size of an offer that can be made before triggering a prospectus requirement under the Prospectus Directive.[7]

4. Public Market Financing

In addition, although GRGI is mindful of the differences that exist between the U.S. and the EU in terms of market financing traditions, we nonetheless believe that the CMU should set a clearer priority of enhancing public market financing.

The U.S. has witnessed firsthand that economic growth, innovation, and quality job creation are linked to the growth of capital markets and their ability to finance enterprises. Both the European industry and regulators could, in the context of the CMU, share the goal of developing larger capital markets and thus fully using the potential currently untapped. The Commission may want to review and eliminate potential barriers and disincentives and promote all possible incentives to develop the use of public markets financing. This should allow companies and investors alike to benefit fully of the added value of public markets for growth and prosperity.

5. Barriers to International Investment

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[6] *See* EY US Private Placement Market Survey 2015 (January 2015), Market Leading Independent Debt Advisory, *available at* http://www.ey.com/Publication/vwLUAssets/EY-USPP-market-survey-2015/$FILE/EY-USPP-market-survey-2015.pdf

[7] The JOBS Act has made similar reforms with respect to non-public offerings for smaller companies under Regulation A and Regulation of the '33 Act. *See* Sections 201 and 401-405 of the JOBS Act.

Finally, and as discussed in more depth below, we believe that an immediate priority under the CMU should be an analysis and a subsequent set of proposals to address third-country equivalence concerns. Inconsistent approaches to equivalence of regulatory regimes across jurisdictions and different pieces of legislation have stifled the ability of non-EU businesses and financial institutions to access the EU market. Although we recognize that this is the subject of ongoing negotiation between the Commission and several non-EU jurisdictions, including the United States, we believe that a resolution of this issue is necessary in order to support robust cross-border and global investment.

B. Improving Access to Finance

Diverse capital markets are critical sources of financing for businesses of all sizes, ranging from SMEs to multinational corporations. The Green Paper notes, however, that SMEs and medium sized companies continue to lack access to public capital markets because of high costs, particularly with respect to due diligence and regulatory requirements. In this respect, a central goal of CMU should be the creation of a strong market-based finance system that provides opportunities for companies of all sizes to access capital.

Several steps can be taken to address these issues, but it should be noted that multiple approaches are needed in order to satisfy the spectrum of business needs. For example, some businesses may avoid raising capital through the public equity markets due to information disclosure requirements, particularly if the business has sensitive or proprietary technology. Others may seek the liquidity and potentially lower cost of capital associated with a public sale of equity, particularly as employees consider the value of stock ownership.

1. Access to Public Markets and Alternative Sources of Financing

The U.S. is currently moving forward with several initiatives to promote financing for main street businesses, which may be worth considering in the context of the CMU. For example, the Securities and Exchange Commission ("SEC") will soon be conducting a "tick size"[8] pilot program for small capitalization companies, which will provide an important opportunity to determine what impact—if any—the widening of tick sizes will have on the liquidity of such companies and their ability to raise capital in a cost-effective manner. We believe that the pilot program will better inform the SEC in its understanding of the equity markets and what further steps can be taken to promote capital formation. These findings may also assist the Commission as the European Securities and Markets Authority ("ESMA") considers a tick size regime for shares, depository receipts, exchange traded funds and certificates under the Markets in Financial Instruments Directive ("MiFID").[9]

Another option highlighted by the Green Paper is the development of cross-border or pan-European crowdfunding, although such efforts appear to be hindered by differences in information disclosure and approaches to crowdfunding regulation across Member States. Key barriers to cross-border crowdfunding in the EU parallel the same concerns in the U.S. - namely, ensuring: (1) adequate investor protection and reducing incidences of fraud; (2) appropriate disclosure of information on a company and associated investment risks; and (3) strong oversight and monitoring in order to ensure appropriate levels of investor protection and efficient means of capital formation. However, the development of crowdfunding should not be hindered by financial reporting requirements that impose unnecessary costs for business and fail to provide investors with decision-useful information. Accordingly, it may be prudent for the Commission to continue to collect stakeholder input on the development of crowdfunding, especially from the United Kingdom, Italy, and France, where national crowdfunding legislation has been adopted.

2. Disclosure Requirements and Financial Reporting

Also, as discussed above, we support efforts to reduce burdensome disclosure requirements for SMEs. In the U.S., policymakers continue to explore methods of helping EGCs access capital and have publically supported legislative efforts to permit

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8 "Tick size" refers to the minimum allowed price movement of a trading instrument. For example, in the United States, a stock has a tick size of one cent.

9 *See* Questions 123-131, Consultation Paper, MiFID II/MIFIR (ESMA/2014/1570), *available at* http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii.pdf

follow-on offerings by EGCs and allow such businesses to maintain their status for a period of time following their initial registration with the SEC. These streamlined registration and disclosure requirements should be considered when the Commission considers how to increase funding to SMEs and medium-sized companies that currently lack access to market-based finance.

We also recognize the need to reduce costs and complexity with respect to accounting standards for small and medium-sized companies. We support this initiative insofar as it does not impede progress toward the convergence of U.S. Generally Accepted Accounting Principles ("U.S. GAAP") and International Financial Reporting Standards ("IFRS"). We urge the Commission to carefully balance these two priorities, as the establishment of different sets of standards under IFRS throughout the EU could hamper momentum towards globally converged accounting standards.

C. *Developing and Diversifying the Supply of Funding*

Adopting measures to support the development of market-based financing will help link sources of capital from savers to investors and drive economic growth in the EU. Market-based financing is important because it provides significant economic services to the global economy by aiding capital formation for businesses and supporting the free flow of capital and goods across borders. Thus, examining regulatory measures that inhibit market-based finance from developing in the EU and determining whether changes are necessary must be an important objective of CMU. New ways to attract institutional, retail, and international investors to the EU should also be explored.

1. *Asset Management*

One important priority is a revision of the framework for the Undertaking for Collective Investment in Transferable Securities ("UCITS"), especially given the important role such funds play for retail investors. Although UCITS V was recently adopted, we urge the Commission to carefully assess the impact of remuneration caps on fund managers and evaluate whether such measures are negatively impacting fund performance.[10] Direct investment by UCITS in loans originated by banks could help spur bank lending to SMEs, especially given that bank lenders often have access to the best information to assess the credit profile of a potential borrower but often lack the capital necessary to make such loans.

More broadly, the Commission should carefully assess the causes for the divergence in the regulatory costs in setting up funds, becoming authorised managers, and selling funds across different Member States. While the UCITS regime has encouraged funds to merge in order to produce greater benefits and economies of scale to investors, differences in local marketing rules and specific demands from Member State regulators have prohibited the UCITS regime from achieving its full potential. One way of addressing this issue may be to provide ESMA the authority to authorise funds within the EU while still allowing national competent authorities to regulate such funds. Other considerations to promote cross-border UCITS investment include translation requirements for summary documents and the requirements regarding appointment of a local facility agent. Addressing such issues will also help ensure greater cross-border participation in UCITS and provide retail investors with more investment options.

The Commission should also carefully consider how current legislation, such as the money market mutual fund ("MMMF") regulation[11], may conflict with the goals of spurring investment in the EU. The Chamber has recently expressed its views on this topic and supports the continued vitality of constant net asset value ("CNAV") MMMFs. CNAV MMMFs represent close to sixty percent of all MMMF funds (or over €478 billion) offered in the EU today, but the MMMF regulation would eliminate CNAV funds and replace them with low volatility net asset value ("LVNAV") funds, but only for a period of five years. Rather than eliminate a key source of short-term funding, we recommend amending the existing the proposal such that (1) LVNAV funds do not automatically expire five years after passage of the regulation and (2) public debt CNAV MMMFs be permitted to invest in all public debt instruments

[10] *See* Article 14, Directive 2014/91/EU of the European Parliament and of the Council (Jul. 23, 2014) ("UCITS V").

[11] European Commission, Proposal for a Regulation of the European Parliament and of the Council on Money Market Funds, COM(2013) 615.

beyond 2020, including debt of any eligible sovereign, as determined by the manager of the MMMF.

We are also concerned about ESMA's recent decision to recommend that research costs be unbundled from dealing commissions under MiFID II.[12] Under ESMA's proposal, portfolio managers will only be able to accept broker research when it is paid for directly through their own resources (e.g., an increase in portfolio management or advice fees or through their own resources). This requirement will directly impact SMEs' access to market-based finance by reducing research coverage, as smaller asset managers will reduce the diversity of their research to reduce costs.[13] As noted above, we believe that encouraging research coverage for SMEs is a critical part of capital formation efforts and should not be discouraged. We thus invite the Commission to revisit this decision and recognize that unbundling research costs from dealing commissions contradicts the goal of CMU to unlock investment and provide much needed financing to SMEs.

2. *Banking*

While most of our response has focused on the role of market-based finance, the importance of bank finance for the European economy cannot be understated. It is widely known that, in the U.S., approximately 80% of capital funding comes from the capital markets and 20% from banks, while the opposite is true in Europe. Despite this difference, common reforms on safety and soundness, bank structure and competition, consumer protection, and the payment system have been enacted on both sides of the Atlantic. Examining the impact of these reforms on access to finance for SMEs, both from the perspective of bank and market-based finance structures, should be a key goal of CMU.

We believe certain refinements can be made with respect to bank capital requirements in order to promote lending to SMEs. For example, current rules under

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[12] *See* Final Report, ESMA's Technical Advice to the Commission on MiFID II and MiFIR (ESMA/2014/1569).
[13] We also note that the U.S. has taken a very different approach and, through the JOBS Act, has encouraged analysts associated with broker-dealers to engage in direct communications with investors with respect to equity offerings of an EGC. *See* Section 105(b) of the JOBS Act.

the Capital Requirement Directive and Regulation discriminate against securitisation transactions relative to other types of investment with similar credit characteristics. We believe that, in order to incentivize securitisation of SME loans, these differences should be resolved such that there is a level playing field between securitisations and other investments with similar credit profiles. Lower risk-weightings for SME loans may also incentivize lending and should be explored.

More broadly, the Chamber remains concerned about the impact of several bank capital and structural reforms that could significantly hamper and raise the costs of capital formation for non-financial businesses. One such initiative is the Financial Stability Board's Total Loss-Absorbing Capital ("TLAC") proposal, on which we have publically commented.[14] We firmly believe that the TLAC proposal will siphon off capital for SME lending. It will also reduce the ability of non-financial firms to access the debt markets, as global systemically important banks ("G-SIBs") will compete with such firms in order to raise the significant amount of debt needed to meet their TLAC requirements. We also have concerns about proposals currently being considered on bank structural reform[15] and believe that such reforms would be better deferred until there is better clarity on TLAC and other international capital standards applicable to G-SIBs.

Finally, we believe that there is an important role for nonbank lenders, such as asset managers, insurance companies, and pension funds, to provide loans directly to SMEs. However, many nonbanks are prohibited from extending loans without obtaining a banking license from its host jurisdiction. In our view, nonbanks should not be required to acquire new banking licenses in each Member State in which it does business, as the varying and often lengthy requirements for doing so often prohibit such lenders from providing credit where it is needed. Such requirements also contradict the intent of passporting regimes under MiFID, UCITS, the Insurance Mediation Directive, and other EU legislation that is meant to ensure that authorized firms are permitted to conduct activities cross-border in order to promote a single

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[14] *See* February 2, 2015 letter from the Chamber to the Financial Stability Board responding to *Consultative Document: Adequacy of Loss-Absorbing Capacity of Global Systemically Important Banks in Resolution*, *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2015/02/2015-2.2-GRGI-TLAC-Comment-Letter.pdf

[15] European Commission, Proposal for a Regulation of the European Parliament and of the Council on structural measures improving the resilience of EU financial institutions, COM(2014)43.

market for services. The Commission should determine whether there are methods of eliminating or mitigating the impact of structural barriers such as these in order to promote the diversity of financing throughout the EU. The broader debate on Better Regulation at European level could be conducive to this.

3. Venture Capital

We note that there is particular attention in the Green Paper to bolstering the venture capital industry. Many of our members have benefitted from the strong venture capital industry in the U.S., and we would be happy to share their experiences with you. In comparing American and European venture capital systems, the differences appear to be primarily driven by opportunities for exit by IPO and a difference in appetite for investing in start-up companies. The EU has taken significant steps to bolster the venture capital industry, particularly through the creation of European Long-term Investment Funds ("ELTIFs"), which will invest in illiquid assets such as venture capital. There is significant interest in the potential of ELTIFs to jumpstart investing in SMEs and provide infrastructure loans, particularly given its EU-wide passport.

We applaud these steps and encourage the Commission to examine additional steps to incentivize institutional investment in venture capital funds. Issues that should be considered include calibrating the prudential capital regime for insurers, pension funds, and banks to incentivize investment in more long-term assets and further developing exit opportunities for venture capital investors.

4. International Investment

Attracting investment from outside of Europe should be a key priority for the CMU, especially in the context of what regulatory barriers make such investment less appealing. Excessive and poorly coordinated international regulation of markets can hurt global economic growth. Since the global financial crisis, banks have been contracting their balance sheets, and this shrinkage has reduced the financing banks provide for their customers and their willingness to take on additional risk. Moreover, market-based financing has not entirely filled this void. The consequence is that market volatility across the globe has increased and there is a potential shortage of liquidity for thinly-traded securities.

In this context, we believe that conflicts between U.S. and European financial services regulation should be resolved in the name of supporting global economic growth and avoiding the potential "balkanization" of the global financial services industry. We have publically supported the inclusion of financial services market access and a new financial services regulatory cooperation mechanism in the Transatlantic Trade and Investment Partnership ("TTIP"). We believe that addressing financial services holistically through TTIP would increase the efficiency of the transatlantic financial markets, facilitate trade and investment, and reduce costs for market players.[16]

We also support the development of a single approach to third-country equivalence. There have been instances where the EU has taken a less liberal approach to third-country access, especially with respect to the recognition of U.S. central counterparties in the derivatives context. Non-discriminatory access to the EU should be a focal point of CMU if the Commission is committed to bringing new sources of capital to the European economy.

Finally, we have serious concerns regarding the continued discussions of a financial transaction tax ("FTT"). The Chamber, along with several other trade associations[17], have long opposed the EU FTT and its substantial extraterritorial impact and believe that its implementation will increase trading costs, reduce financial transactions in financial markets subject to the tax, diminish liquidity in the marketplace and, ultimately, hurt the real economy. In the context of access to finance for SMEs, we fear that a FTT could limit secondary market trading for securities that will already be very illiquid, which will impact the ability of these firms to raise capital.

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[16] *See* Joint Statement, Transatlantic Trade and Investment Partnership, Jan. 30, 2015, *available at* http://www.insuranceeurope.eu/uploads/Modules/Newsroom/joint-ttip-statement-2.pdf

[17] *See* Letter to Commissioner Algirdas Šemeta, Enhanced Cooperation Agreement for the Financial Transaction Tax, *available at* http://www.ici.org/pdf/27051-1.pdf

D. *Improving Market Effectiveness – Intermediaries, Infrastructures, and the Broader Legal Framework*

We believe that steps to streamline regulation of issuers and financial services participants in Europe will promote more opportunities for cross-border investment in SMEs. In the United States, Congress passed the National Securities Market Improvement Act of 1996 ("NSMIA") to address the previous patchwork of state registration laws, which was a particular challenge for smaller issuers. Companies were often frustrated by the lack of uniformity in state registration requirements, which often led to higher offering expenses, delays in listing, and potentially sunk costs of state registration fees if registration was denied. NSMIA addressed these concerns by reallocating the regulatory responsibilities of federal and state regulators with respect to registration requirements, as well as with respect to the regulation of investment advisers and broker-dealers. While the EU has adopted several passporting regimes for the presence or provision of services by an authorized firm, NSMIA may serve as a helpful model in determining next steps for developing pan-European markets.

We also support the development of a single rule book for the single market, with ESMA ensuring consistent supervision across Member States and leaving national supervisors with the task of enforcing those rules. This is in line with the principle of subsidiarity, although we do believe that there should be a baseline in each Member State for investor protection and encouraging cross-border operations and financing.

With regard to broader concerns with market functioning, we strongly urge the Commission to recognize current issues relating to proxy advisors, such as a lack of transparency regarding the formulation of their policies and recommendations, analytical and reporting errors, the absence or inadequate dialogue with issuers to prevent errors, and the use of outdated or misinterpreted corporate data.[18] These problems are exasperated by the fact that the proxy advisory industry is dominated by two firms, which are relatively unaccountable as a result. We believe that these issues

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[18] *See* Letters to Members of the Committee on Legal Affairs of the European Parliament and Deputy Permanent Representatives of the Member States, Proxy Advisors and the Revision of the Shareholder Rights Directive, Jan. 30, 2015.

should be addressed in the Shareholder Rights Directive by requiring proxy advisors to engage in more dialogue with issuers and disclosing conflicts of interest to clients and issuers.

Conclusion

Thank you for your consideration of these views. The Chamber and GRGI strongly support the development of the CMU and hope that you will consider these examples and recommendations as you move forward. We look forward to an ongoing dialogue with you and your staff to explore how the CMU will be developed over the next four years for the benefit of SMEs and the European and global economies.

Sincerely,

Tom Quaadman