

**Conference on the Report of the Financial Services Roundtable's  
Blue Ribbon Commission on Competitiveness**

Introduction

Peter J. Wallison  
American Enterprise Institute

November 13, 2007

As everyone knows by now, three recent reports have suggested that the United States is losing its edge as the world leader in financial markets. Increasingly, transactions and public offerings that used to come first to Wall Street are now being handled in London, in Hong Kong, and elsewhere. It is no answer to say that this is the natural result of other markets becoming more sophisticated. That is certainly true, and something we should applaud, but there is plenty of evidence that we are losing out in the competition because of our own actions rather than the improvement in the size and liquidity of foreign markets.

Among other things, the London market is growing quickly at our expense, and—tellingly—advertises itself to the world as a Sarbanes-Oxley-free zone. Excessively costly regulation of public companies is certainly one reason that foreign companies do not want to list in our public securities markets, and why many of them have actually taken steps to withdraw from public ownership in the United States. Another example is the large number of going-private transactions—a symptom of the fact that it is now too expensive for smaller companies to remain public. Finally, there is the remarkable fact that foreign companies raised more equity financing privately in the U.S. in 2006 than they raised in all our public securities markets combined. In other words, the U.S. market is attractive as a place to seek financing, but not if it will subject companies that issue securities to the costs and liabilities that public ownership entails.

The Roundtable's *Blueprint* report itself summarizes the problem well: “[W]ith the accelerating expansion of global markets and competition, it appears that we may have reached a ‘tipping point,’ where the inability of our current legal and financial regulatory system to adapt to new global methods of regulation is putting the competitiveness of U.S. firms at risk.” In other words, our regulatory and legal systems no longer efficiently protect consumers while allowing the flexibility that companies need to address the competitive challenges from overseas. Both systems appear now to have become sclerotic—frozen in place and unable to adjust to changing conditions and challenges. Three reports—one by an important Senator of the majority party—and

nothing at all happens, either at the regulatory level or in Congress. That's more than disappointing; it's a lack of seriousness.

How can the necessary change be brought about? The Commission's approach was to suggest two main reforms—a more principles-based regulatory regime and new financial services charters. The Commission was aware that full-scale principles-based regulation, such as that which the Financial Services Authority (FSA) in Britain is trying to create, is not workable in the U.S. legal system. A principles-based regime rests upon discretionary enforcement of regulations by the regulatory authority; the FSA can decide whether it believes a regulated company has acted within the scope of the principles. But in the U.S. legal system regulations may be enforced by private class actions and even by state authorities acting under federal law. In this context, full principles-based regulation would expose companies to even more litigation than they face today. Yet, principles that serve as guidelines—channeling rules in particular directions and excluding rules that are inconsistent with the principles—might be workable, and this is the perspective that the Commission took. Its view was that a set of principles would at least lend some consistency to the regulations of the many regulatory bodies that regulate the members of the financial services industry. These principles would be enacted by Congress, be applicable to all financial services regulatory agencies, and their implementation would be overseen by the President's Working Group.

The Commission's second approach was to recommend that Congress authorize several new national charters—one for securities firms, one for insurance companies, and one for diversified financial services firms. In a sense, the charter idea is intended to let companies free themselves of excessive and overlapping regulation. They can do this by choosing a federal charter under which they would have only one regulator, much like what a national charter has done for banks.

This is not a completely new idea. An optional federal charter for insurance companies has been discussed for many years in the insurance industry. But extending the idea to securities firms, and especially to diversified financial services firms, has important implications that need to be carefully thought through. Like the idea of guiding principles for regulation, the proposal to create new charters at the federal level, if adopted, would work major changes in the US regulatory structure.

As a matter of full disclosure, I was a member of the Blue Ribbon Commission, but I don't agree with all its recommendations. This is not one of those reports in which all the members have to sign on the dotted line—and a good thing, too, because those commissions that insist on word for word concurrence often have to water down their recommendations to a common denominator. That wasn't done in this case. This is a serious report, of reasonably bold colors, that reflects the general approval of the sixty or so members of the Commission and their organizations. It raises some challenging questions that we will try to get out on the table in the discussion that will follow the presentation of the report by Jim Sivon and Greg Wilson, the two principal authors.