**Chairman Garrett Speech for U.S. Chamber of Commerce SEC Reform Event – 12-14-11**

**"Rethinking Priorities: The Need for Fundamental Reform at the SEC"**

- First, I want to thank the Chamber and its Center For Capital Markets Competitiveness for inviting me to speak with you here today.

- Thanks very much, David, for that very kind introduction, and thanks to Tom Quaadman and his team for all of the good work they do and good information they provide to me and my staff.

- The title of today's event is "The U.S. Securities and Exchange Commission: Working Towards Fundamental Reform"

- And while I think that is a great title for the event and an absolutely worthy goal, I'm not sure that's what is actually going on over at the Commission.

- I will give Chairman Schapiro credit – I think she has made some effort and progress over there to make the institution work better.

- But I don’t think what is happening over there currently would be considered “fundamental reform”.

- The new Chamber report that is the reason for today’s event puts it succinctly: “one critical exercise has not been undertaken. The SEC has not undertaken a serious, objective self-examination of the way it does its job. While the agency has many more staff and much more authority, it still operates the same way that it has for decades.”

- Now, admittedly, achieving fundamental reform working purely from the inside of an organization can be difficult, so I applaud the Chamber for undertaking this initiative, with the keen insights of Jack Katz, to take a good hard look at ways to address the shortcomings of this agency.

- And I think even the Commission’s most die-hard defenders will admit that it has serious shortcomings.

**BUDGET**

- Lots of folks will say that a bigger budget will solve the Commission’s problems.  While I will let my colleague Congresswoman Emerson address these issues in more detail, let me just say that I disagree with this point of view.

- The SEC saw its budget more than triple in the last decade or so – In this era when we need to truly get serious about cutting spending across the board at the Federal level, no agency, especially one with a spotty track record that has already seen its budget tripled, should be going around continually asking for more money in this budgetary and political climate.

- Here is a good place to start on where the SEC needs to re-think it priorities.  Rather than always seeking additional funding, it needs to fundamentally examine how to more efficiently use its existing funds.

- In my view, Congress shouldn't even consider giving an additional dime to this agency at least until it accomplishes what this forum is all about – achieving fundamental reform.

**COST-BENEFIT BILL**

- I'm a lawyer, so I can say this -- One way to fundamentally reform the agency would be to address the overabundance of lawyers at the SEC and re-emphasize economic analysis.

- There are a number of ways you could go about accomplishing this – first, you could simply hire more economists in place of some of those lawyers. That would be a start.

- An additional step could be taken through legislation. Last month, my Subcommittee marked up the "SEC Regulatory Accountability Act" (HR 2308) after it was featured as part of a full committee hearing earlier this fall on SEC reform.

- I introduced this legislation with 14 of my colleagues to ensure that the SEC, as an independent agency, would be subject to the President's recent executive order to improve regulation and regulatory review.

- At the very least, existing regulations need to be reviewed periodically to determine whether they are outmoded, ineffective, or excessively burdensome.

- In addition, my bill would strengthen the Commission's cost-benefit analysis by:
    - first requiring the Commission to clearly identify the nature of the problem that the proposed regulation will be designed to address;

  - second, by requiring cost-benefit analysis be performed by the SEC's office of the Chief Economist, and
  - third, requiring the Commission to identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation, together with an explanation of why the regulation meets the regulatory objectives more effectively than the alternatives.

- That first one, in particular, is important. And here is another opportunity for the SEC to re-think its priorities. Too often, government regulations are solutions in search of a problem – responding to sound bites or perceived problems without considering all the potential unintended consequences.

- My legislation would change that. Under my bill, before regulators go too far down the road of designing a particular regulation, they would need to show just cause, through sound data and economic analysis, that there is an actual problem that needs to be solved.

- Furthermore, I made some changes to the bill before the markup to strengthen it, including by adding a section suggested by Jack Katz, that is also included in the report he wrote for the Chamber, to provide for a clearer post-implementation assessment of new regulations.

- This post-implementation analysis, coupled with the pre-implementation effort, will better inform policymakers and those affected by regulations of the true impact of major rules. And, as the new Chamber report states, “Knowing that rules will be empirically examined will force the staff to carefully consider how this will be done and to develop internal discipline in the drafting process.”

- In the new version of the bill I also added a section that requires the SEC to put forth a report on how entities under its purview, including the PCAOB, MSRB, and FINRA, would be subject to requirements of this Act going forward.

- To me, these common-sense reforms make a lot of sense, especially given the fact that the Commission continues to struggle with this issue.

- For instance, in the recent unanimous opinion of the DC Circuit Court of Appeals, which vacated the Commission’s proxy access rule, the Court stated that “the Commission acted arbitrarily and capriciously for having failed once again to adequately assess the economic effects of a new rule" and "inconsistently and opportunistically framed costs and benefits of the rule."

- As the opinion alludes to, this isn't the first time that the SEC has had a rule successfully challenged in court due to substandard cost-benefit or economic analysis.

- And while Chairman Schapiro raised some concerns about specific provisions of H.R. 2308 at September's hearing, the updated version of the bill seeks to address those concerns by tightening up the scope of orders subject to the bill's provisions and by deleting non-core factors from ones the SEC would need to consider as part of its required cost-benefit analysis.

- Clearly, a stronger commitment to cost-benefit analysis by the S.E.C. is absolutely essential to ensure reasonable rules that do not unduly burden registered companies or negatively impact job creation.

**FIRE POOR PERFORMERS**

- While a greater commitment to cost-benefit and economic analysis is an important component of any effort to reform the SEC, it is certainly not the only component.

- Another area of focus should be the role the union plays at the Commission, as well as other related issues.

- As I stated at a hearing last Spring, several fundamental questions need to be asked in this area. For instance, is the union hampering reform efforts within the institution? Additionally, is it even appropriate for a bunch of highly paid government attorneys to be organized in a union to begin with?

- It seems to be a recurring theme that no matter how serious the scandal, or how questionable the performance by some at the agency, nobody ever gets fired.

- In fact, the Boston Consulting Group study released earlier this year pointed this out. It pointed it out in "consultant-speak", but it pointed it out.

- Here's the quote from the BCG report – "a performance management system that does not support necessary involuntary attrition will reduce the agency's overall effectiveness."

- In other words, if you don't fire poor performers, the overall effectiveness of the agency suffers.

- And here again is an opportunity to re-think priorities at the agency.

- The new Chamber Report lays this out well. In the past, the SEC had a problem retaining employees. Now it is retaining them too well.

- The BCG report details that while the typical federal agency sees involuntary attrition rates of 4-8 percent per year, the SEC has an involuntary attrition rate of less than 1 percent per year. This needs to be addressed.

**<u>MADOFF</u>**

- Shifting gears for a moment, I would like to touch on the Madoff debacle. The fact that the SEC had opportunity after opportunity to intervene and stop this fraud but never did, is often cited as one of the Commission's greatest failures, and I would agree with that assessment.

- One great failure, however, does not have to be compounded by another.

- Now more than three years after Madoff's arrest, thousands of defrauded investors have still not received advances they are entitled to through the Securities Investor Protection Corporation (SIPC).

- Worse yet, many of these same innocent investors who relied on statements issued by SEC-regulated firms, are now facing the terrifying prospect of being sued for clawbacks by the SIPC Trustee.

- So here again, is an opportunity for the SEC to re-think its priorities. Rather than having the same government that failed to protect these investors in the first place punishing these same innocent investors a second time, the SEC has an opportunity to step up and protect these defrauded investors as they reasonably expect to be protected under the Securities Investor Protection Act (SIPA).

- It is my hope that I can work with Chairman Schapiro to find an equitable solution to this terrible problem.

**CONCLUSION**

- I think that is about enough of me talking – I'd like to get to questions that those of you in the audience may have.

- But before I finish, I just want to thank the Chamber's Center For Capital Markets Competitiveness once again for this timely and important report and event today.

- I will look forward to reviewing the report's recommendations more fully, and to the extent practicable, see if some of them may be able to be put into legislative form and receive consideration by my subcommittee.

- And finally, when we're talking about fundamental reform of the SEC, one thing worth seriously thinking about is better coordinating the work of the SEC and CFTC.

- As we've seen on numerous rulemakings under Dodd-Frank, as well as in the lack of coordination leading up to the bankruptcy of MF Global, these two agencies often don't work that well together, yet often deal with overlapping or similar issues.

- While merging the SEC and the CFTC wasn't tackled as part of Dodd-Frank because of the perceived political difficulties, (and merging the two entities would, indeed, be a difficult undertaking,) something needs to be done in this area to achieve more efficient regulation of our markets.

- Thanks again, and I'm happy to take questions.