Helping Business Bear the New Financial Consumer Protection Regime
Remarks of FTC Chairman Jon Leibowitz as Prepared for Delivery
United States Chamber of Commerce
Center for Capital Markets Competitiveness
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Thank you, and special thanks to David Hirschmann, for the opportunity to speak about the FTC – our nation's primary agency protecting consumers and markets – as we enter a new era of financial reform regulations, fiscal challenges, and divided government.

In preparing for this speech last week, I caught your CEO, Tom Donohue, on PBS's Nightly Business Report. He was expressing concern that the change in leadership in the House would lead to the Obama administration relying more on its regulatory powers to get things done. Tom said, "The resulting regulatory tsunami poses, in our view, the single biggest challenge to jobs, our global competitiveness, and the future of American enterprise."

But later I heard Tom call Bill Daley, President Obama's new chief of staff, "a man of stature and extraordinary experience" who the Chamber "looks forward to working with…to accelerate our recovery, grow the economy, create jobs, and tackle America's global challenges."

Some might call Tom's take on the Administration incongruous. I like to think of it as evolving.

The Chamber's ambivalence over the coming regulatory environment for business – especially in light of last year's massive overhaul of our financial laws – is understandable.

I had hoped that, this afternoon, you would greet me as a fellow warrior in the battle to bolster the confidence of the American consumer – weeding out the crooks and scam artists who divert dollars from legitimate businesses – opening markets so any honest business, regardless of size, can compete – and, as a result, create jobs.

But it seems you might see instead the head of a federal government bureaucracy, a hindrance to your struggle to get the American economy moving again, a regulator, and, worst of all … a lawyer.

It is like that old story about a lawyer and a businessman taking a hike in the woods. A bear leaps onto the trail, threatening them. The lawyer immediately opens his backpack, takes out a pair of running shoes, and changes into them. The businessman says, "Are you crazy? You can't outrun a bear!" "I don't have to outrun him," answers the lawyer, "I just have to outrun you."

If you walk away today with one impression, I hope it is that the FTC does not intend to leave you at the mercy of the bear – or the bear market. On the contrary, as the federal agency tasked with protecting <u>your</u> customers and <u>your</u> markets, we plan to stand by American business as you build back a strong, prosperous, fair, and job-creating economy.

But you invited me today, not just to talk about the FTC, but to address the new agency soon to be on the beat, the Consumer Financial Protection Bureau. And though its organization and the FTC's collaboration with it have just begun, we do know a few things about what the CFPB will be like.

The CFPB will be an untested entity with enormous power. The Bureau will have a substantial budget almost entirely out of the control of Congress, receiving 10 percent of the Federal Reserve's budget outside the appropriation process, which gives every other government agency – including mine – budget envy.

It plans to hire hundreds of new employees beyond the consumer protection staff that it will inherit from other agencies. It will have rulemaking authority far broader than the FTC's over those who offer financial services to consumers, including banks and their service providers.

So while I don't share your concerns, I understand why there is some anxiety about the new CFPB. But having said that, my sense is that your fears will turn out to be unfounded. Let me tell you why.

On the rulemaking side, the Dodd-Frank Act requires that rules not be duplicative or conflicting. My sense is that the new Bureau's rules will be reasonable and that the Bureau will be particularly mindful of small business concerns. Under the reform bill, a panel consisting of staff of the OMB, the SBA and the CFPB will review CFPB rules – before they are proposed to the public – to assess the proposed rules' impact on small businesses. The panel can recommend changes to a proposed rule to make it friendlier to small businesses, and its report has to be made public.

The FTC has already detailed staff to the CFPB to get them up to speed on the rules we have in place (like our new mortgage modification rule) and the rule we have in the works on mortgage servicing and to help them understand the right way to write rules.

On the law enforcement side, the FTC will be sharing enforcement of financial consumer protection laws and the rules the CFPB creates under those laws. In the abstract, it is not unreasonable to have concerns about overlapping jurisdictions.

But neither agency will have the time to double team the legitimate businesses the Chamber represents; we'll be too busy going after the multitude of truly bad actors on the consumer financial protection stage – fly-by-night "foreclosure consultants" taking advantage of struggling homeowners, debt collectors engaged in illegal harassment, and payday lenders failing to disclose outrageous fees, to name but a few. The list is long enough that no one in this room need worry about double jeopardy for the businesses we police.

More important, Dodd-Frank requires the FTC and the CFPB to put a Memorandum of Understanding in place to make certain neither government nor business resources are wasted.

Moreover, just look what has come out of the Administration in the past few weeks: a new pro-business chief of staff for President Obama in Bill Daley, a new pro-business chief of staff for Vice-President Biden in Bruce Reed. Elizabeth Warren went to Maine last week to meet Senator Snowe and her constituents. And this week the President issued a new Executive Order encouraging regulatory approaches that reduce burdens on businesses and maintain flexibility, such as through disclosures of information.

All of this is not a coincidence: these actions signal where the Executive Branch is going.

By the way, we are also pleased that the CFPB has embraced one of the FTC's priorities: simplifying disclosures made to consumers when they purchase a mortgage. Anyone who has tried to read the RESPA and TILA forms knows how difficult they are.

The FTC is not – and I believe the CFPB will not be – bureaucratic agencies devising new hoops for your already stressed businesses to jump through; rather, we'll be the cops on the beat, driving out the business equivalents of pick pockets, sidewalk scam artists, and thieves so your customers feel comfortable coming into your store.

The FTC may not be a for-profit enterprise, but our work produces a terrific return on the investment taxpayers make: For every dollar spent by the FTC, we provide a return on investment of $5.00 – or over 500 percent – to American consumers and businesses. I'm hopeful that the CFPB will be just as productive.

Let me elaborate on how the FTC has been an effective cop during the current economic downturn. In the past ten years, we have brought dozens of law enforcement actions to stop companies that prey on cash strapped families, winning over $600 million in redress for consumers bilked by deceptive or unfair financial services.

One group of scammers we have especially targeted is "foreclosure consultants." These vultures prey on victims of the housing market collapse and of the record rise in foreclosures. They collect high upfront fees, and make promises to renegotiate mortgages and save homes, but because, at least in many of the cases we've seen, roughly 95 percent of their staff are in sales and about 3 percent are working to modify mortgages, consumers usually end up with nothing at all. Rather than giving struggling homeowners the lifeline they paid for, they throw them an anchor, sinking homeowners deeper into a financial morass.

We've been bringing similar cases against companies promising to eliminate consumers' credit card debt, charging high up-front fees for the same sort of empty promises.

This past year, after shutting down some of the most egregious of these bottom feeders, we wrote two new rules with the support – <u>with the support</u> – of the banking industry. One covers mortgage modification companies that target homeowners facing foreclosure and the other covers debt relief companies that target consumers deep in credit card debt. Both of these new regulations prevent companies from receiving their fees until they have performed the promised services and require them to make certain key disclosures, such as that they are not affiliated with a government assistance program.

We are also working with a number of federal agencies, including the Treasury Department, the banking agencies, and HUD, coordinated by the Financial Fraud Enforcement Task Force at Justice, to investigate and respond to the reports of harms from foreclosure document robo-signing and other servicing abuses. For its part, the FTC currently is monitoring mortgage servicers under our existing orders to confirm that their servicing and foreclosure processes are proper.

This is all good, pro-business policy: it restores consumer confidence, redirects dollars to legitimate business, and thus helps bolster the economy.

It also reflects the attitude the FTC brings to all our work – an approach described best in Jack London novels and those brochures they hand out in the Western National Parks: When facing a bear, one must remain calm, no fancy moves, no complicated escape strategies. At the FTC, we follow that advice; we understand that markets need a steady, apolitical, intelligible, and certain set of rules to work most smoothly for consumers and businesses alike.

That should give you confidence that, as we move forward with the CFPB and in all our other work, we will continue in a nonpartisan, pro-consumer, pro-business bent – because that is who we are at the FTC.

We are an independent agency. We are not part of the administration and we do not worry about poll results. We operate in a bipartisan manner to promote competition and protect consumers. We have to: No more than three commissioners from the same party can serve at the FTC at the same time.

In practice, this means our enforcement changes little from administration to administration. Take, for example, competition issues: almost 98.5 percent of merger deals that we review go through after the first filing. The 1.6 percent of deals that go to "second requests" – usually more time consuming and intensive investigations – occurred at the same rate during my first year as the previous year when my colleague Bill Kovacic, a Republican, was chairman.

Our touchstone is not politics, but consumers and competitive markets, as well as the businesses that serve the former and operate in the latter.

We are the agency of the Do Not Call registry, which Dave Barry has referred to as the most popular government program since the Elvis stamp. With more than 200 million phone numbers listed, the registry has returned dinnertime to the American family.

We are the agency that ferrets out fraudulent marketing claims that hurt consumers and legitimate companies – everything from cell phone cards that mislead about fees per minute to dietary supplements and devices that give false hope to those with cancer and other serious conditions.

We are the agency that protects small businesses from scammers who cram charges on businesses' phone bills for products never ordered – from web design services to Internet directory lists.

We are the agency helping to rid cyberspace of identity thieves, spammers, child pornographers, data hackers, and all the other criminals that make consumers wary of shopping online.

And we are the agency that is going to stop the very anti-competitive pay-for-delay practices that are allowing a few drug companies to drive up the cost of health care for all of us, businesses and consumers alike. In these backroom deals, the branded pharmaceutical companies literally pay their generic competitors to stay off the market. Our economists estimate that the payoffs increase the cost of prescription drugs by $3.5 billion each year – and that's a conservative estimate. As you know, it is not just consumers who pay those costs; it is every company that buys health care – your members – as well as federal, state, and local governments, and hence taxpayers. Our drive to end pay-for-delay settlements has garnered the support of every single commissioner – Democrat, Republican and Independent – since I've been on the Commission.

That is why it surprised me that the Chamber opposed legislation that would have stopped these sweetheart deals. It doesn't make sense that you would support fewer than 1 percent of the Chamber's membership at the expense of the other 99 percent of companies who will pay more for their employees' health care because of higher prescription drug costs. This is a discussion for another day, but for now, I hope you will begin to rethink your position.

On this, and every other issue, we are willing to work with you, as we've always been. But you need to be willing to work with us too and to make sure your companies understand, as I am sure all of you here in this room do, that government and even regulations sometimes do have value.

The FTC is an enforcement agency with occasional forays into regulation. But that does not mean our interests or our mission is inimical to American business or economic health. Quite the opposite: We are not the bear on the path. We are not even the lawyer running off to let you face the bear alone.

We are standing next to you – as we have through Democratic and Republican administrations, Democratic and Republican Congresses – holding bear bells, pepper spray, and an extra pair of running shoes, so we can <u>together</u> make our way out of the woods and back to the prosperity America deserves.