Americans for Financial Reform
Accountability, Fairness, Security
1825 K St NW, Suite 210, Washington, DC, 20006
202.263.4533

February 24, 2010

The Honorable Christopher Dodd
Chairman

The Honorable Richard Shelby
Ranking Member

Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby,

As your Committee prepares to release a revised draft of the Restoring American Financial Stability Act of 2009 ("Stability Act"), Americans for Financial Reform urges you to retain your strong commitment to the corporate governance and investor protection reforms that were included in the November Discussion Draft. Institutional investors have repeatedly stated that board-level failures to oversee risk management and pay-for-failure executive pay schemes played a key role in creating the global financial crisis. Claims to the contrary made by the U.S. Chamber of Commerce and its lobbyist allies are not only wrong, they are self-serving and duplicitous, particularly in light of U.S. Chamber CEO Tom Donohue's own dismal record as a director of four scandal-ridden companies. If the false rhetoric from the Chamber-led consortium of lobbyists is heeded and we fail to address critical weaknesses our corporate governance structures, we can only expect to repeat the history of the past two years

The Chamber's claims that governance failures played no role in the crisis not only reinvent history, they attempt to pass off dangerous misrepresentations made to protect the status quo as concerns that the Stability Act reforms would inhibit job creation and recovery. The substance of these claims is demonstrably false, but equally troubling is questionable credibility of those making the claims. The true constituents that direct and finance the U.S. Chamber-led opposition to reform – the entrenched CEOs, captive boards of directors, and special interests on Wall Street – have been well served by a system of corporate governance that enables pay-for-failure but deters accountability to shareholders. Indeed, Chamber CEO Tom Donohue earned millions in fees as a director of scandal-plagued companies whose shareholders suffered huge losses during his tenure and his failed service as a corporate director is emblematic of the need to reform this broken system. Mr. Donohue's lack of standing to credibly speak on sound corporate governance practices is detailed in the attached report "Preaching Principle, Enabling Excess: How Tom Donohue Compromised the Credibility of the U.S. Chamber of Commerce."

Americans for Financial Reform is a coalition of over 200 national, state and local consumer, labor, retiree, investor, community, business, and civil rights organizations who are campaigning for real reform in our nation's financial system. We detail below why you should reject the U.S. Chamber-led consortium's opposition and support strong corporate governance reforms.

The Governance Reforms and Investor Protections in the Stability Act are Necessary to Prevent another Financial Crisis

The corporate governance and investor protection provisions in the Stability Act are designed to provide shareholders – the true owners America's corporations – with tools that will ensure transparency and accountability for the management of the companies they own. It is precisely the absence of such tools in today's system that allowed publically traded financial services firms to take on excessive risk while rewarding executives for ephemeral, short term gains.

Institutional investors have recognized that risk management oversight failures by the boards of Wall Street banks were a central factor in the financial collapse.[1] Moreover, it is well documented that the executive compensation plans prevalent on Wall Street, in which the vast majority of pay comes through stock options and bonuses based on short-term performance, ensured that bank executives reaped huge gains while the housing bubble grew, but suffered none of the downside when their over-leveraged bets and gambles on complex derivatives went sour. The "moral hazard" built into such pay schemes incentivize excessive risk-taking and continue to imperil our economy today.[2] And yet it is exactly these unbalanced and dysfunctional compensation practices that the Chamber-led consortium seeks to protect.

Academic researchers, investors, and regulatory authorities have also made clear that the particular corporate governance and investor protection provisions in the Stability Act – including proxy access, advisory votes on executive compensation ("say on pay"), prohibiting staggered boards of directors and requiring majority voting in uncontested director elections – are necessary, market-based complements to the external regulatory efforts of the SEC and tools essential to enable shareholders to protect their investments.[3] Without them, investors will have limited means with which to hold accountable failed directors and executives; the damaging focus on short-term gains at the expense of long-term growth will remain; the massive payouts to

---

[1] In a November letter to House Financial Services Chairman Barney Frank, a group of the nation's largest public employee pension funds stated that, "The financial crisis at its heart reflects a failure of oversight – at the regulatory level, but also by corporate boards." Letter to Chairman Frank, November 3, 2009. Similarly, a poll conducted by the bi-partisan ShareOwners.org showed that "a full 91 percent of investors in the ShareOwners.org opinion survey named 'corporate directors who failed to do their job' as the party 'most responsible for the current meltdown in the financial markets.'" The full results of the poll can be found at: http://216.250.243.12/so/062509%20ShareOwners%20org%20US%20investor%20survey%20report%20FINAL1.pdf.

[2] *See* Bebchuk, Lucian A., Cohen, Alma and Spamann, Holger, "The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008" (November 24, 2009). Yale Journal on Regulation, Summer 2010, Forthcoming; Harvard Law and Economics Discussion Paper No. 657. Available at SSRN: http://ssrn.com/abstract=1513522.

[3] "The global financial crisis represents a massive failure of oversight." CFA Institute Centre for Financial Market Integrity and the Council of Institutional Investors, "U.S. Financial Regulatory Reform: The Investors' Perspective" (July 2009), avail at: http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20(July%202009).pdf; *see also*Lucian A. Bebchuk and Scott Hirst, "Private Ordering and the Proxy Access Debate," The Business Lawyer, 8 (forthcoming Feb. 2010), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1513408; *see also* Grant Kirkpatrick, Organisation for Economic Co-operation and Development, "The Corporate Governance Lessons from the Financial Crisis," 2 (Feb. 2009), avail at: http://www.oecd.org/dataoecd/32/1/42229620.pdf); *see also* Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission (SEC), "Statement at SEC Open Meeting on Facilitating Shareholder Director Nominations," May 20, 2009, transcript available at: http://www.sec.gov/news/speech/2009/spch052009mls.htm.

corporate executives who take excessive risks will continue to go unchallenged; and the global economy will remain susceptible to future crises that could destroy billions more in shareholder wealth and catapult the global economy into another tailspin.

The U.S. Chamber-led Lobbyist Consortium Promotes an Agenda that is *not* Pro-Business or Pro-Jobs; it is Pro-CEO

A closer look at the historic opposition the U.S. Chamber and its allies have voiced to *any* attempt to ensure greater accountability to shareholders or to rein in excessive executive compensation reveals the true motivation of their current opposition to reform: to protect the privileges and outsized pay of an elite group of CEOs, failed corporate directors, and Wall Street bankers. False rhetoric notwithstanding, the Chamber-led consortium's opposition to corporate governance reform and increased investor accountability – and to financial reform in general – is not pro-business, pro-jobs or pro-economic growth. It is pro-CEO, anti-accountability, and places the interests of big banks on Wall Street above all else.

The motivation behind the U.S. Chamber's anti-reform agenda was made abundantly clear in January, when U.S. Chamber CEO Tom Donohue likened the executives of TARP banks who concocted the toxic mortgage securities and other complex derivatives at the root of the financial crisis to "mad scientists" whose brilliance justified their outsized pay.[4] At a time when millions of Americans are struggling to stay afloat and pension plans fight to protect their beneficiaries' retirement security, big banks on Wall Street have seen fit to reward themselves with near-record bonuses for 2009, despite requiring billions in taxpayer support to even survive 2008.[5] This short-sighted greed is not just an embarrassing display of hubris. It demonstrates that Wall Street has learned nothing from the financial meltdown it caused and that there remains every possibility that we will face another such crisis in the future if financial regulatory reform is not enacted.

U.S. Chamber President Tom Donohue's Record as a Corporate Director Exemplifies the Need for Governance Reform to Protect Shareholder Wealth

The Chamber's credibility on corporate governance reform is further undermined by Mr. Donohue's own problematic record as a director on the boards of four companies that engaged in the very practices that underscore the need for genuine director accountability. That is the conclusion of the enclosed report on Mr. Donohue and the U.S. Chamber. Among the examples highlighted in the report,

- Mr. Donohue sat on the Qwest board that BusinessWeek named to its list of Worst Boards in 2002, citing an expert who called the compensation committee on which Donohue served "comatose for paying ex-CEO Joe Nacchio $88 million in 2001."

[4] Reuters, "Wall St must pay 'mad scientists' well: lobbyist," January 12, 2010 (avail at: http://www.reuters.com/article/idUSTRE60B4DQ20100112).
[5] According to the New York Times, the top five banks on Wall Street – Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase and Morgan Stanley – paid themselves $114 billion in 2009, almost equaling the $135 billion in bailout funds they received. New York Times, *Wall Street Pay*, Louise Story (avail at: http://www.nytimes.com/info/wall-street-pay/).

Nacchio is serving six years in federal prison for insider trading at Qwest, a conviction the U.S. Chamber unsuccessfully urged the U.S. Supreme Court to overturn in 2009.

- Mr. Donohue is a longtime director of Sunrise Senior Living, which overstated ten years' of earnings by 94% and misdated stock options. A two-year SEC investigation into Sunrise's accounting practices, insider stock sales and the timing of stock option grants was ongoing as of its most recent quarterly filing with the SEC. In 2009, Sunrise paid $13.5 million, without admitting to liability, to settle shareholder litigation alleging that Donohue himself was among the Sunrise insiders who received backdated options and engaged in insider trading.
- When shareholders responded to the Sunrise board's accounting and compensation failures in October 2007 by withholding a majority of votes from Craig Callen, one of the few directors then standing for election, Mr. Donohue and his fellow directors reseated him anyway.

The Executive Summary is enclosed, and the full report is available on-line at: http://www.changetowin.org/chamber. The report demonstrates that Mr. Donohue has repeatedly engaged in questionable conduct and less than responsible decision-making as a corporate director and that companies on whose boards he has served have been victims of alleged insider trading, apparent stock options backdating, accounting scandals and substantial shareholder losses. As such, the U.S. Chamber under Mr. Donohue is uniquely *un*qualified to speak credibly on what corporate governance structures are necessary to protect shareholder wealth.

Conclusion

The corporate governance and investor protections in the Stability Act are vital to restoring confidence in the U.S. financial markets, and thereby ensuring recovery from the economic crisis of the past two years. You should not be misled by Mr. Donohue and the U.S. Chamber-led consortium of lobbyists into believing that such investor protections somehow undermine our nation's economic position, when their recommendations are nothing but an attempt by special interests to protect their privileged positions. We urge you to reject their rhetoric and distortion, and to continue your support for the Stability Act's corporate governance reforms.

Sincerely,

Americans for Financial Reform

Cc: Members of the Committee on Banking, Housing, and Urban Affairs

Enclosure