

# CAREW CARSWELL

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VIA EMAIL

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F. St., NE  
Washington, D.C. 20549-1090

Re: Retrospective Review of Existing Regulations, File Number S7-36-11 (the “Retrospective”)

Dear Ms. Murphy,

I am writing to comment on the Securities and Exchange Commission’s (the SEC) response to the President’s Executive Order 13579, which urges agencies like the SEC to promote, among other virtues, “economic growth, innovation, competitiveness, and job creation.”<sup>1</sup> I will frame my comments not only with these virtues in mind, but will also do so in juxtaposition to the SEC’s aim to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”<sup>2</sup> I offer my comments as a registered investment advisor, a general securities registered representative, a service provider to the hedge fund industry, and as one with over two decades of experience in the securities investment industry.<sup>3</sup>

In seeking to focus on the questions posed in the Retrospective, I urge the SEC to consider the following points, which correspond directly to two important questions raised in the Retrospective:

First, the single most important consideration in the SEC’s effort to examine existing rules, or to contemplate the implementation of prospective new rules, should be the empirically proven solidity---or lack thereof---of the existing or prospective rule’s likelihood of advancing the Presidents Executive Order as well as the SEC’s aim to protect investors and solidify U.S. market and capital formation viability (all grouped together, I call these ideals the Ideal Vision).

In other words, for the SEC to leave in place existing rules or to implement new rules that have not or cannot be empirically proven to fulfill the goals of the Ideal Vision, the sad resulting reality is tantamount to the SEC using their imagination to posit solutions to problems or to merely envisage the outcome of a particular business scenario. This is irresponsible when in fact the livelihoods of many business men and women in our industry depend on reasonable and viable regulation—not regulation that needlessly constrains people from maximizing their wish to live a life marked by freedom and abundance.

Indeed, this imaginatively derived regulation scenario is happening now, in my opinion; that is, many rules exist today that appear to me to be based on the imagination or presumed ‘informed’ judgment of those making the rules that the SEC enforces, and many such rules serve only to

hamstringing industry professionals and investors from engaging in productive business relations---many of whom could hasten the fruition of the Ideal Vision. I therefore urge the SEC thusly: *Prove that an existing or prospective rule serves the Ideal Vision before implementing it or allowing it to stay in place.*

Secondly, the “How to” of my aforementioned point is addressed herein and presents a challenge to the SEC to take a proactive approach in reviewing past rules’ sensibility and exploring future rules’ potential effectiveness. That is, my understanding is that the SEC currently only posts on its web site what I consider to be passive notices of proposed rules. To me, this approach is passive in that it assumes that a meaningful portion of the public as well as industry practitioners will frequently visit the SEC web site and will provide comments within the often tight timeframes within which comments are accepted by the SEC. Yet, by looking at the number of responses that the SEC receives from industry practitioners and the public, this passive approach to bolstering SEC rule making can be seen as severely lacking.

In my view, the SEC should proactively solicit industry professionals and should specifically target those industry practitioners who specialize in the particular areas where rule making is being considered. Moreover, the SEC should directly solicit public investors for their comments. With perhaps the most voluminous database of industry professionals in the U.S., and with what I assume to be the contact information of thousands of public investors who have visited the SEC web site over many years, a massive target market of survey candidates await the SEC’s questions in their rule making efforts. Proactively ask and you shall receive, I do firmly believe.

In summary, I urge the SEC to examine its existing rules and prospective rules against empirical evidence and studies, and I urge the SEC to proactively approach industry practitioners and public investors for their views and ideas as to how we can all achieve the Ideal Vision.

Sincerely,

Carew Carswell

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<sup>1</sup> From page 1 in the Summary of the Retrospective

<sup>2</sup> From page 2 in the Retrospective.

<sup>3</sup> You may visit [www.carewcarswell.com](http://www.carewcarswell.com) for more information.