Thank you for that kind introduction and for the opportunity to speak to you today. It is an honor to address the U.S. Chamber of Commerce. I have enormous admiration and respect for this institution.

Let me start by saying that my remarks reflect my own views and do not necessarily constitute the views of the Commodity Futures Trading Commission (CFTC or Commission), my fellow CFTC Commissioners, or the hardworking CFTC staff.

Just a few years ago in the aftermath of the financial crisis and the rollout of the TARP program, the U.S. Chamber stood strong and dauntless in defense of American free enterprise and capital markets. The U.S. Chamber held the line though surrounded by fierce critics of American finance and capital formation. The U.S. Chamber's CEO, Tom Donahue, took a very simple but symbolic action when he hung one word in giant letters from the rafters of this building: J-O-B-S.

By posting the word that is at the heart of what really matters to American voters, their jobs, Donahue was reminding our political leadership that, despite all the challenges it faced, the litmus test by which it would be judged would be job creation. Donahue knew that Americans – just as they always have been – were ready once again to work hard to bring our economy back from the brink provided barriers were not placed in their way.

Donahue was also reminding us that free enterprise remains the best path to job creation. Free enterprise and democratic capitalism remain the backbone of the American republic. They have always been and will always be the route to American prosperity.

Sadly, the job creation prowess of democratic capitalism is still baffling to many who should know better. One well-known, perennial Presidential candidate recently said, "Don't let anybody tell you that corporations and businesses create jobs."1 That may be true, under the current Administration, which has made private sector hiring much more expensive and burdensome.

Yet, this political statement is flatly incorrect as a matter of economic science. It is emblematic of a fundamental misunderstanding of basic economics from college campuses, to Hollywood, to Washington, DC. I believe it is the duty of all of us to help the public better understand the benefits of capital markets and the American industries they support. It is our duty to promote, rather than denigrate, financial markets for their health and service to the American economy. They are the key to American economic growth and job creation. We cannot have a prosperous U.S. economy without them.

The 2008 Financial Crisis: There is no question that the 2008 financial crisis presented an enormous challenge for American capital markets. In September of that year, Lehman Brothers filed for Chapter 11 bankruptcy protection. Lehman's failure was a consequence of the bursting of a double bubble of housing prices and consumer credit as lenders anticipated a fall in home values and the inability of homeowners to repay mortgages. A full "run on the bank" ensued with rapidly falling asset values, preventing U.S. and

foreign lenders from meeting their cash obligations. The 2008 financial crisis was devastating for far too many American businesses and families.

I remember the crisis very well. I was a senior executive of a U.S. wholesale brokerage firm that operated trading platforms for over-the-counter swaps transactions. I remember the panic in the eyes of bank executives and the tremor in the voices of financial regulators.

The experience confirmed my support, which has not waivered, for the core tenets of Title VII of the Dodd-Frank Act. I support more central counterparty clearing of swaps and reporting trades to centralized data repositories. I also support sensible regulation of swaps intermediaries to raise trading standards and bring swaps markets in line with regulation of intermediaries in other capital markets, like equities and futures.

However, I am also a firm believer that vibrant, open, and competitive markets are essential to a strong U.S. economy. Proper regulatory oversight can go hand-in-hand with open and competitive markets. But, if excessive regulation artificially increases the cost of risk management and stymies the legitimate use of derivatives, the overall economy will suffer – and American jobs will be lost.

My experience in the financial crisis also started me down a long path that led me to government service at the CFTC. I am one of three new commissioners sworn in this past spring. Chairman Timothy Massad, Commissioner Sharon Bowen, and I all come from law firm backgrounds outside of the futures industry. Along with existing Commissioner Mark Wetjen, I believe we bring to the Commission something of the collegial spirit of partners in a law firm. We may not always agree, but I am hopeful that we will engage in less of the internal warfare that characterized the Commission over the recent past. I am cautiously optimistic that we can change the tone at the Commission.

In fact, I believe the Commission has the opportunity to begin a new era in federal regulation. Over the past few years, the federal government has had a crisis-driven, headlong rush into law and regulation reaching deeply into the everyday affairs of all Americans, from the process of obtaining a home mortgage to visits with family doctors. As I will explain, this regulatory reach even extends to the price of cereal on the grocery shelves. Some of these regulatory actions serve a useful purpose. Others are unworkable. Some impede economic growth.

What is needed is a more thoughtful, steady, and less hectic approach to regulation. What is needed is a more careful weighing of the balance between regulatory benefit and economic cost. What is needed is greater respect for the impact of Washington's mandates on the lives of everyday Americans. I believe the CFTC can take this more measured approach to regulation of the derivatives markets.

In this regard, today, I would like to lay out a set of principles that I will follow as I serve on the Commission. I believe these principles are well suited for financial market regulation in a new, more balanced regulatory era.

Six Principles for Financial Market Regulation

Regulation must:

1. Not Restrain the U.S. Economy;
2. Not Threaten American Jobs;
3. Be Impartial and Balanced;
4. Be Competent;
5. Be Accountable; and
6. Not Create the Next Crisis.

Principle One: Regulation Must Not Restrain the U.S. Economy.

In Washington recently, the Managing Director of the International Monetary Fund (IMF), Christine Lagarde, dubbed current economic conditions as the "New Mediocre."[2] That is actually a mild description for what is the worst U.S. recovery from any recession since the Great Depression. U.S. economic growth has averaged 2 percent in the New Mediocre, compared to 3.3 percent for most of the period since post-World War II.[3]

The U.S. has recovered from eleven other recessions before the current recovery. In those recessions, the economy took a little over a year to recover to the level of gross domestic product it had prior to the recession.[4] But, in the current New Mediocre, it has us taken four years, to reach that point.[5]

Federal regulations have become a major drag on the U.S. economy. Regulations now cost the U.S. more than 12 percent of gross domestic product, or $2 trillion annually.[6] The average manufacturing firm spends almost $20,000 per employee per year on complying with federal regulations. For manufacturers with fewer than fifty employees, the per-employee cost rises to almost $35,000.[7] With this level of regulatory cost, it is no wonder that U.S. economic growth is so meager. In a recent, major survey of CEOs of American companies, over-regulation was overwhelming cited as a barrier to capital investment that would otherwise stimulate job creation and wage growth.[8]

Let's look at regulation in my area of derivatives. Some of you know how the derivatives markets work, but I think a basic example will be useful. Let's start with your local grocery store. We all take for granted an abundance of food on the shelves week after week, year after year. We never have to wonder how the weather is affecting the growing season or if it was a bountiful or lean harvest in thousands of rural counties all across our country.

Yet, visitors to America from the developing world are amazed by the constant bounty of food at relatively stable prices in our grocery stores. In many parts of the world, plentiful food depends on a good harvest. A bad harvest means there is little to eat. With little to no income from a bad harvest, farmers are unable to plant the next year causing further hunger and misery.

The use of risk hedging instruments, namely commodity futures and other derivatives, is one of the important reasons Americans have an abundance of food on the shelves. Many of our agricultural producers hedge their prices and costs of production in America's futures markets. It is the same reason we usually can rely on enough electricity to run our homes and gasoline to fuel our cars. The health and efficiency of U.S. futures and derivatives markets have a direct impact on the price and availability of the food we eat, the warmth of our homes, and the energy needed to power our factories.

In keeping with the principle of not restraining the economy, I recently voted against a CFTC rule proposal that did not do enough to ease an unnecessary burden on participants in America's futures markets. That proposal was a well-intentioned, but insufficient attempt to provide relief from unworkable CFTC data recording and recordkeeping requirements. Rather than facilitating the collection of useful records to use in investigations and enforcement actions, the rule imposes senseless costs that fall especially hard on small intermediaries between American farmers, manufacturers, and U.S. futures markets.

These intermediaries are known as futures commission merchants (FCMs). Their services are used by America's farmers and producers to control costs of production. Yet, today we have around half the number of FCMs serving our farmers than we did a few years ago. FCMs, particularly smaller ones, are being squeezed by the current environment of low interest rates and increased regulatory burdens. They are barely breaking even.

We should not be squeezing them further with increased compliance costs if we can avoid it and still effectively oversee the markets. The stated purpose of the Dodd-Frank Act was to reform "Wall Street." Instead, we are burdening "Main Street" by adding new compliance costs onto our farmers, grain elevators, and small FCMs. Those costs will surely work their way into the everyday costs of groceries and winter heating fuel for American families, adding an additional drag on the U.S. economy.

Principle Two: Regulation Must Not Threaten American Jobs.

The official U.S. unemployment rate has fallen steadily during the past few years. Yet, this recovery has created the fewest jobs relative to the previous employment peak of any prior recovery.9 The labor force participation rate recently hit a thirty-six-year low of 62.7 percent.10 The number of Americans NOT in the labor force recently hit a record high of 92.6 million.11 Part-time work and long-term unemployment are still well above levels from before the financial crisis.12

Worse, middle class incomes continue to fall during this recovery, losing even more ground than during the recession.13 The number in poverty has also continued to soar to about fifty million Americans.14 That is the highest level in the more than fifty years that the census has been tracking poverty.15 Income inequality has risen more in the past few years than at any recent time.16

Recently, my fellow New Jerseyan, Governor Chris Christie, pointed out that the bigger problem today is not income inequality, it is opportunity inequality.17 He is right. The opportunity in this country to work in a full-time job has been diminished over the past few years in the New Mediocre economy.

Unfortunately, federal regulators are not helping matters. One particular CFTC action poses a serious threat to jobs in the U.S. financial services industry in cities across the country. In November 2013, the CFTC issued a benign sounding "Staff Advisory," which imposed complex U.S. trading requirements on swaps trades between non-U.S. businesses whenever anyone on U.S. soil "arranged, negotiated or executed" the trade.18 It is causing many trading firms to consider cutting off all activity with U.S.-based trade support personnel.

This Staff Advisory was hurriedly issued a year ago by agency staff without a vote of the full Commission. My fellow Commissioner and former Acting Chairman, Mark Wetjen, even said its issuance was not the "right decision." The Staff Advisory jeopardizes the role of bank sales personnel in U.S. financial centers from New York and New Jersey, to Boston, Charlotte, and Chicago. It will likely have a ripple effect on technology staff supporting U.S. electronic trading systems, along with the thousands of jobs tied to the vendors who provide food services, office support, custodial services, and transportation needs to the U.S. financial services industry.

This CFTC Staff Advisory is a threat to American jobs. In September, I called for its withdrawal. Just last week the CFTC delayed it for the fourth time.19 When a regulatory action needs four delays, I think we all can admit that it is not workable and needs to be scrapped. With tens of millions of Americans falling back on part-time work, it is not in our economic interest for Washington regulators to cause good-paying full-time jobs to be eliminated.

Principle Three: Regulation Must Be Impartial and Balanced.

Early in 2009, while global capital markets were reeling, a new Administration was settling in. It brought with it a governing philosophy best expressed by Rahm Emanuel, then White House Chief of Staff. He told a conference of business leaders: "You never want a serious crisis to go to waste…. This crisis provides the opportunity for us to do things that you could not do before."20

This crisis exploitation methodology was the catalyst for a whole slew of new legislation, from the gargantuan stimulus package to cash for clunkers to Obamacare, and, of course, the Wall Street Reform and Consumer Protection Act, better known as the Dodd-Frank

Act. Crisis exploitation was a theme not only of the White House and Congress, but was also prevalent in many federal regulatory agencies, including the CFTC.

In just one example – and there are many – the CFTC took advantage of the crisis to amend its rules to assert jurisdiction over hundreds of previously excluded registered investment companies engaged in commodity trading activity above particular thresholds. Up until that point, mutual funds and other investment companies that manage American's retirement and other investments had long been largely exempt from CFTC oversight. Instead, they were and continue to be comprehensively regulated by the Securities and Exchange Commission (SEC). Nevertheless, the CFTC narrowed the previous exclusion and required these SEC-registered investment companies to also register with the CFTC as commodity pool operators. This triggered burdensome reporting and disclosure requirements that are sometimes duplicative and, in other places, inconsistent with the reporting and disclosure requirements under the SEC's rules.

In asserting jurisdiction over these investment companies, the CFTC claimed it was acting "consistent with the tenor" of the Dodd-Frank Act, which had given the agency "a more robust mandate to manage systemic risk and to ensure safe trading practices by entities involved in the derivatives markets."21 Yet, nothing in the Dodd-Frank Act directed the CFTC to narrow the exclusions for SEC-registered investment companies. It was just regulatory opportunism by the CFTC. The CFTC's burdensome requirements on registered investment companies means that higher costs are being passed onto the 401(k) plans and other retirement savings of millions of ordinary Americans. Never let a good crisis go to waste.

I believe the American people have grown wary of this regulatory explosion. They want all branches and agencies of the federal government to do their jobs well and without overreach.

Principle Four: Regulation Must Be Competent.

In 2008, President Obama undertook to provide a highly competent form of government that would be "cool again" as an "agent of change."22 Yet, a constant stream of scandals has called into question the competence of many federal government agencies, including such previously esteemed institutions as the Secret Service, the Veterans Administration, and the Centers for Disease Control and Prevention.

These scandals have had an impact. Public trust in the federal government is at an all-time low according to a recent poll.23 Just 13 percent of Americans say that the government can be trusted to do what is right always or most of the time.24 That 13 percent compares to 36 percent during the Watergate crisis forty years ago.25

I believe there is a direct link between a government trying to do too much and a government doing things incompetently. In 2011 and 2012, respectively, MF Global and Peregrine Financial Group failed, causing huge losses for American agriculture producers who use futures to manage the everyday risk associated with farming and ranching. The

failure of MF Global and Peregrine was a "black eye" for the CFTC and resulted in enormous political pressure to "do something."

In October of last year, the CFTC responded with a misnamed, "customer protection" rule with the ostensible purpose of preventing another MF Global or Peregrine.26 While some aspects of the rule were needed and widely welcomed by market participants, the rule also required FCMs to pay futures clearinghouses at the start of trading on the next business day. The rule caused an outcry of opposition as it became clear that it would result in farmers and ranchers having to prefund their futures margin accounts. They argued that the CFTC rule would ensure that they would lose more of their hard-earned money, not less, the next time an FCM failed the way MF Global did. The rule would likely drive many small and medium-sized agricultural producers out of the marketplace along with the smaller FCM community that serves them.

The futility of the CFTC's "customer protection" rule has now been partially addressed through a proposed rule amendment unanimously adopted by the new Commission a few weeks ago.27 Still, it stands as an example of flawed regulation rushed through in the wake of a crisis "to do something" without adequate analysis of its impact on those it is meant to help.

In my work at the CFTC, I want to make sure the rules we put forward actually solve real problems, not invented ones. I have developed an analysis formula contained in a simple mnemonic: "SMART-REG."

It stands for:

S Solve for real problems, not anecdotes of bad behavior;
M Measure success through a rigorous cost benefit analysis;
A Advance innovation and competition through flexible rules;
R Represent the best approach among alternative courses of action;
T Take into account evidence, rather than assumptions;

R Realistically set compliance deadlines;
E Encourage employment of American workers;
G Grounded in law.

My staff and I will to use this SMART REG standard to help evaluate whether rules are truly in service to the U.S. economy and the American markets.

Principle Five: Regulation Must Be Accountable.

I am sure most of you have now heard of a very talkative MIT Professor who claims that a "lack of transparency" was necessary to pass Obamacare.

As financial regulators, we at the CFTC seek increased transparency and accountability from our derivatives markets and from participants in those markets. The Commission must live up to the same standard. Yet, that has not been the case at the CFTC over the past few years.

A recent study by the Mercatus Center of George Mason University takes a thorough look at the way in which the CFTC went about implementing much of the Dodd-Frank regulatory framework.28 It shows how the CFTC failed to consistently employ a transparent, deliberative rulemaking process under the direction of the five commissioners with substantial input from all affected parties, oversight by Congress, and clear avenues for judicial review.29 Instead, it used a confusing, ad hoc rulemaking process that excluded important viewpoints, foiled oversight efforts, and aggravated regulatory compliance burdens.30 This ad hoc process included the issuance of an extraordinary number of no-action and other staff letters.31 None of these no-action and other staff letters – including 110 staff letters just in the first eight months of 2014 – benefitted from any cost benefit analysis. None were put through ordinary public notice and comment. None were voted on by the Commission. The Mercatus study argues persuasively that these failures eroded not only the public's confidence in the CFTC as a regulator, but the CFTC's ability to establish a compliance culture in the industry it regulates.32

I believe that such regulatory short-cuts must be curtailed. Regulation must not be produced in a vacuum with no oversight.

Fifty years ago, Ronald Reagan said: "This is the issue…: Whether we believe in our capacity for self-government, or whether we abandon the American Revolution and confess that a little intellectual elite in a far-distant capitol can plan our lives for us better than we can plan them ourselves."33

Two weeks ago, the American people reasserted their preference to plan their own lives without dictates and opacity from Washington.

Principle Six: Regulation Must Not Create the Next Crisis.

I began my remarks today by recalling the times just after the financial crisis when many shrill voices were blaming American capital markets for the financial crisis. I noted that there has been little in the way of acknowledgement for the federal government's role in the crisis. That includes the misbegotten policies that resulted in an unprecedented number of risky mortgages and other lending that was at the center of massive and unchecked housing and credit bubbles. There is still little acknowledgement today, let alone reform, of Freddie Mac and Fannie Mae, major agencies of those dangerous government policies.

Instead, we have had a shifting in attitude on how U.S. capital and financial markets should function. The arguments are that markets need to be made less risky. A large number of coordinated and uncoordinated initiatives are in place to limit market activity,

from the Dodd-Frank Act's Volcker Rule and swaps push-out provisions to the Federal Reserve's rule imposing margin on uncleared swaps to increased capital requirements imposed by the Basel Committee on Banking Supervision.

The result is that financial institutions are building up large capital reserves. To do so, they have curtailed putting their capital to work on behalf of clients and economic growth. It has reached such a level that the IMF recently issued a report discussing the need for more not less economic risk-taking to help global recovery.34 The report calls on banks to revamp their business models to once again become engines of growth. Yet, it neglects to call out regulators for restricting the banks' ability to put their capital to work efficiently.

The CFTC has put forth its share of bad rules in the name of market risk reduction. Those include a series of swaps "transaction level" rules based on the wrong template of the U.S. futures markets, including a host of peculiar and unprecedented swaps trading restrictions that are tangential to their stated purpose of shielding the U.S. from counterparty risk. I will soon be issuing a White Paper proposing improvements to these rules.

The CFTC then coupled the rules with "interpretative guidance" and "staff advisories" on their cross-border reach based on market participants' U.S. personhood and employee location. The global response to the CFTC swaps trading regime has been swift and dramatic. Since the rules went into effect in October 2013, and accelerating thereafter, global swaps markets have divided into separate trading and liquidity pools between those in which U.S. persons are able to participate and those in which U.S. persons are effectively shunned. According to a survey conducted by the International Swaps and Derivatives Association, the market for U.S. and euro interest rate swaps, two of the most widely used products for hedging, has split into two over the past 12 months.35

Fragmentation of global swaps markets between U.S. person and non-U.S. person means smaller and disconnected liquidity pools and less efficient and more volatile pricing for market participants and their end-user customers. Fragmentation also means greater risk of market failure in the event of economic crisis. Market fragmentation increases the very systemic risk that the Dodd-Frank Act was predicated on reducing.

An American economy that is just starting to show signs of recovering from the "Great Recession" cannot bear the reduction in global trade in financial services and increased systemic risk that is a looming possibility.

In trying to stamp out risk, we are harming trading liquidity. The last crisis was one of counterparty credit risk. I fear that the next crisis could well be a liquidity crisis – a crisis in which capital-constrained banks and other market makers have little choice in a panic but to limit their exposure to increasingly fragmented markets. Such a pullback would leave America's farmers, ranchers, and manufacturers without the means to fund their operations or hedge their operational risks. We are still fighting the last crisis. We must consider whether our regulations will land us in the next one.

Conclusion

I have set out six principles for financial market regulation in this post-post-financial crisis era. I believe that many Americans earlier this month expressed their dissatisfaction with Washington's hasty and flawed regulations that seek to exploit crises and blame markets, while expanding the federal government's reach to every aspect of American life.