Opening Statement
Rep. Richard H. Baker
Subcommittee on Capital Markets
Hearing entitled "America's Capital Markets: Maintaining Our Lead in the 21st Century."
April 26, 2006

Good Morning, today the Capital Market's Subcommittee meets to hear from our distinguished witnesses their views on the global competitive outlook of our nation's capital markets.

Having the world's most efficient capital markets is not America's birthright, rather it is a position earned through hard work and ingenuity. If the U.S. Capital Markets are to retain this distinction, there must be recognition and restoration of the principles that enabled such success. Further, those who regulate and legislate for these markets must institute necessary reforms to maintain our primacy, or inherit the consequences of our inaction. Over the last five years, both legislators and regulators have spent a great deal of effort in responding to a crisis in investor and market confidence. The Enron, WorldCom, Global Crossing, and Tyco revelations (to name a few), in conjunction with the DotCom bubble bursting, brought home a sobering reality; there were material weaknesses not only in the way these companies operated, but perhaps more importantly, in the manner in which they were regulated. Through the efforts of the Congress, the PCAOB, SEC, and others, investor confidence has been significantly improved. This confidence has never been more important as now over 95 million Americans call themselves investors, or stated another way, over half of all American households are marketplace investors.

Restoring fairness and enhancing transparency in our markets requires continued vigilance on the part of both regulators and legislators. However, I believe our markets are now facing an even greater challenge; retaining supremacy in an increasingly competitive global market. If the NYSE/Archipelago and NASDAQ/Instinet mergers were not enough proof of the changing nature of our markets, NASDAQ has also just purchased 14% of the London Stock Exchange, while the NYSE has expressed interest in gaining a share of a European exchange as well. Innovations in technology have had a dramatic impact on both trading and capital formation, and innovators have made great strides in increasing the efficiency of our markets. Today, U.S. markets are the most sophisticated and technologically advanced in the world. So why are so many companies choosing to list abroad at exchanges such as the London Stock Exchange instead of on U.S. Exchanges? I believe there are three significant areas of concern:

(1) irresponsible litigation and the costs it imposes on businesses, shareholders, and consumers;

(2) inefficiencies in the regulation of our capital markets;

(3) the historic lack of progress in addressing accounting complexities and international convergence of accounting standards.

These domestic issues, combined with increasingly efficient and liquid foreign markets, pose a significant challenge to the supremacy of U.S. capital markets. If unaddressed, these barriers to attracting capital to our markets will continue to put the U.S. at a growing disadvantage in the global market. Investor protection and global competitiveness are not necessarily mutually exclusive. Congress must insure the regulatory system is effective, while enabling innovative and profitable activities.

First, responsible tort reform is essential to combat the high cost of frivolous lawsuits that plague our markets. Class action suits often times do little to provide restitution to injured investors and all too often only enrich those attorneys who handle them. There is a need for re-balancing, between justifiable actions against frivolous filings. Such review and reform is essential to maintain market dominance in a global market. As an aside, I am proud that the Fair Fund, created in Sarbanes-Oxley, has now designated over 7.5 billion dollars for return to investors without the need of class action litigation. There are effective ways to react to unprofessional conduct.

Secondly, we must undertake a comprehensive review of the manner in which securities transactions are regulated. Smart and efficient regulation increases the value of a market for both companies and investors. Duplicative and unnecessary regulation does little else than to raise costs and lower returns, thus making a market less attractive for all participants. Many of these redundant and outdated regulations are within the authority of regulators to address on their own, and several have begun such evaluation. However, aggressive oversight is still necessary at the Congressional level to ensure that regulatory constraints that provide little or no benefit to investors are eliminated. Much of our regulatory standards were proposed in 1933 & 1934. There has to be room for considerable improvement.

Finally, our current accounting environment is hindered by being a rules-based, retrospective looking system of financial reporting. As we heard from witnesses at our recent subcommittee hearing, (Fostering Transparency in Financial Reporting) technological advances are allowing companies instantaneously determine their financial condition and therefore able to provide that information to the markets in virtually a real time manner. Projects such as XBRL, or eXtensible Business Reporting Language, being undertaken in by the FDIC & SEC will help provide participants in U.S. markets relevant data more quickly, enabling more informed investment decisions. Moving away from quarterly earnings forecasting toward real time reporting will also serve to help minimize the market volatility, while diminishing the need for "creative" earnings management by corporate executives. This will also assist progressing toward an international convergence of accounting standards. A global market requires the free flow of capital across international boundaries, and this requires a seamless and uniform method of accounting.

For many years, U.S. capital markets were considered by investors to be "alone at the top" with regard to opportunity and efficiency. However, while we have been tying our own markets down with regulatory rope, China, Europe and other foreign markets have been following the risk taking model that made our markets great. These foreign markets have gained significant ground in the global competition for capital. This fact drives the point home, 20 out of 24, of the largest most recent IPOs were brought public, not in the U.S., but overseas. Many large companies now prefer to list in London or Tokyo, instead of New York. These events should serve as a wake-up call for Congress and the regulators. While we should be very concerned that capital is leaving our markets, we also have an obligation to American investors. Over half of working Americans now invest in U.S. markets in a very significant way. Smart and efficient regulation is both beneficial and necessary to a properly functioning capital market, but it is also necessary to insure investors have clear disclosure and timely information to make their investment decisions. And when necessary, there should be regulatory action taken against those who fail to discharge their fiduciary duties. This is not a complicated task. Balancing investor protection with efficient market function just makes sense. When investors have confidence, capital flows freely. A free flow of capital enables markets to grow, enabling product development, and job creation. This is the essence of properly balanced capital markets. This is what makes America work. We cannot accept anything less.