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Office of Management and Budget
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Re: Call for public comment on improving the process and principles governing Federal Regulatory Review (Federal Register / Vol. 74, No. 37 / Thursday, February 26, 2009).

1.0 Introduction

- 1.1. ACCA is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people around the world who seek a rewarding career in accountancy, finance and management.
- 1.2. Globally, we support our 131,500 members and 362,000 students throughout their careers, providing services through a network of 80 staffed offices and centers around the world. We have 11 chapters across the US which meet regularly in the following cities and areas: Boston, Chicago, Houston, Dallas, New York-New Jersey-Connecticut Tri-State area, Philadelphia, Los Angeles-Southern California, San Francisco-Northern California, South Florida, Atlanta, and Virginia-Maryland-DC.
- 1.3. The expertise of our senior members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility. Evidence

2.0 Regulating in challenging times

- 2.1 Following the dramatic events of 2008, the case for increased regulation, not only of financial services but of the real economy as well, appears to be stronger than ever. Risk-aversion and trust in government among the public are on the rise, while trust in the wider business community has fallen.¹ Even in the US, government's fiscal options are being constrained by the deteriorating state of public finances. This has made regulation, a loose substitute of tax, more attractive for policymakers.² No doubt these facts, more than any defect in the existing framework, will inform the new Executive Order on regulatory review. We agree with the President that

¹Edelman Trust Barometer 2009. Fieldwork took place from 5 November to 14 December 2008.

² R. A. Posner, 'Taxation by Regulation' *Bell Journal of Economics* 2(1): 22-50 Spring 1971.

there is much room for improvement. But he should also bear in mind that, in heeding the calls for tougher regulation, he could risk undermining the small business sector that will lead the US economic recovery.

- 2.2 Outside financial services, the case for regulation has not changed. The financial crisis has not exposed a world where workplace injuries, employer misconduct or lapses in food standards are more frequent or damaging than previously thought. In most cases, the nature of the underlying risks has not changed, and regulators' understanding of these risks has not improved, as it did for systemic risks in banking.
- 2.3 ACCA's SME Committee has warned that regulatory review is less relevant when pursued in terms of *outputs*, such as savings for business.³ If, instead, it can target *outcomes* in the business environment, regulatory review will be more useful now than ever. The effect of regulation on business creation and survival, job creation and competition should, in our view, be the preoccupations of outcomes-based regulatory review.
- 2.4 Perceptions of regulation can influence the rate of business start-ups and employment decisions by sole traders, which will be central to halting the rise in unemployment.⁴ Additionally, reduced regulatory burdens could contribute to higher rates of business survival by reducing distraction among SME owner-managers.⁵ Finally, the competitive impact of regulation could become more acute in the current adverse credit environment, as any regulation requiring high levels of investment is more likely to raise barriers to entry. The ensuing concentration cannot later be reversed by simply removing the regulations that created it.

3.0 Beyond cost and benefit: suggestions for better regulation

- 3.1 Regulation, like tax, is a fact of economic life. Together, these two are responsible for much of the infrastructure that society and the economy rely on. But they both ultimately make use of the private sector's resources, for which their originators need to be accountable to the public. And unless these resources are used efficiently, either regulation or tax can make America less enterprising and competitive and the US public less prosperous.

³ ACCA, 'Better regulation: what it really means' February 2009. See also ACCA's submission to the UK House of Commons Regulatory Reform Committee inquiry, *Themes and Trends in Regulatory Reform*.

⁴ Perceptions of administrative burdens have been found to discourage people who are already thinking of starting up in business from taking further action. Grilo, I. & Thurik, R. 'Determinants of entrepreneurial engagement levels in Europe and the US.' *Industrial and Corporate Change*. 17:6, October 2008.

⁵ C. Decker, T. Keyworth, and G. Yarrow, 'Identification of regulatory impacts on scale economies in compliance costs.' In BERR Occasional Paper no. 3, 'Impact of regulation on productivity' September 2008.

3.2 Because accountants are the small business sector's advisers of choice on matters of regulation⁶, ACCA has made a point of representing the unique perspective of our members to regulators around the world.⁷ Through our partnerships with government agencies, we have urged an agenda of Better Regulation, underpinned by the following processes:

- An evidence-based process of assessing public risk
- An equally robust process of regulatory impact assessment
- Risk-based prioritisation of regulations and regulatory budgeting
- Assessment of business capabilities and compliance behaviour.
- Monitoring of business and public perceptions of regulation.

3.3 The methodology of cost-benefit analysis as an impact assessment mechanism is open to a great deal of criticism, much of it justified. Yet there is no denying that policymakers need to understand how individual regulations can deliver benefits (or they will not) and how they can burden businesses and consumers (because regulation has a host of unintended consequences). There is also no denying that regulations that do not adequately consider these matters should be subject to review.

3.4 Furthermore, the international experience in regulatory reform suggests to us that both the prospect of independent challenge⁸ and public scrutiny⁹ can lead to a higher quality of impact assessment and strengthen efforts to deliver better regulation. We believe that the public and specific stakeholders groups can be engaged in all of the processes outlined above¹⁰, and will be pleased to provide examples of good practice.

4.0 Understanding compliance

4.1 Independent evidence suggests that Government officials around the world have so far been unable to regulate with the small business in mind.¹¹ It is also a fact that smaller businesses are numerous and diverse, and it is difficult to derive a representative picture of their behaviour without compromising its value through aggregation.

4.2 While we are not best placed to comment on developments in the behavioural sciences, we firmly believe that robust research evidence should inform all assumptions about compliance behaviour, and

⁶ Bagchi-Sen, S., & Kuechler, L. (2000). Strategic and functional orientation of small and medium sized enterprises in professional services: an analysis of public accountancy *The Service Industries Journal*, 20(3), 117-146

⁷ See ACCA, 'Supporting enterprise globally' February 2009.

⁸ UK National Audit Office, 'Delivering High Quality Impact Assessments' January 2009.

⁹ The benefits of reporting on regulatory reform alongside the fiscal budget cycle are documented by the World Bank in the case of the Dutch regulatory reform programme. World Bank Group, 'Review of the Dutch administrative burden reduction programme' February 2007.

¹⁰ For an example of how this applies to assessment of public risk, see UK Better Regulation Commission, 'Public Risk – The Next Frontier for Better Regulation' January 2008.

¹¹ See ACCA, 'Supporting enterprise globally' February 2009.

furthermore that such assumptions must be made explicit by regulators in the design of policies so that they can be evaluated appropriately.

- 4.3 We are, however, aware of scientific work in the more mundane areas of business economics and management, accounting, risk and regulation. This literature clearly demonstrates that compliance behaviour is a function of business' in-house resources and capabilities, their supply chain relationships and bargaining power, workplace relations and recourse to advice.¹² A solid understanding of these factors can help policymakers produce more effective and efficient regulation.
- 4.4 There is potential to further improve on this understanding through post-implementation reviews, whereby regulators can assess the responses of businesses to new regulation and the antecedents of those. Whatever science is used to anticipate compliance behaviour, its predictions will need to be validated ex-post. We believe that this will be to the benefit of both policy and science.

For further information, please contact:

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¹² See for instance M. Hart, J. Kitching, R. Blackburn, D. Smallbone, N. Wilson, R. Athayde, 'The impact of regulation on small business performance', BERR, April 2008.