2016 AGENDA

ENSURING COMPETITIVE MARKETS AND PRESERVING ACCESS TO CAPITAL

THE SPIRIT OF ENTERPRISE
U.S. CHAMBER OF COMMERCE

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

Center for Capital Markets Competitiveness

2016 Agenda: Ensuring Competitive Markets and Preserving Access to Capital

Nearly a decade ago, the U.S. Chamber of Commerce launched the Center for Capital Markets Competitiveness (CCMC) to ensure America was home to the most transparent, liquid, efficient, and well-regulated markets. The Chamber recognized that without strong markets the economy would suffer and job creators and individuals would lose access to capital, tools to manage risk, and opportunities to invest and save and that modern regulatory structures are the foundation for fair and efficient capital markets.

The years since then have been turbulent—from the financial crisis and its legislative response to the increasingly polarized political environment—but the CCMC has continued to fight for American businesses to ensure that the capital markets provide them with the necessary foundation to drive economic growth and compete in a global economy. While some progress has been made to update and streamline our antiquated regulatory structure, the economic and policy instability of the past decade have made the CCMC's work even more important for long-term economic growth.

Recent attacks on financial institutions may be good politics, especially in an election year, but many are both misguided and wrong. This rhetoric will do nothing to ensure we have a financial regulatory system that works for investors, consumers, and job creators. While the world has changed, the CCMC's mission remains the same: to advance America's global leadership in capital formation by supporting diverse capital markets and rational regulatory systems that are the most fair, transparent, efficient, and innovative in the world. We will continue to fight for changes that will help create a regulatory system capable of both ensuring financial stability and advancing economic growth. Anything short of that will fail to meet the needs of businesses, investors, and consumers.

The CCMC will advocate for reasonable reforms and communicate the value the financial sector provides to both individuals and companies. Policymakers have important choices ahead of them and we are committed to ensuring they make decisions that are driven by data, facts, and the desire to achieve the best outcome.

The CCMC's work is focused on achieving the following goals important to our capital markets:

1. **Modern Regulatory Systems and Reasonable Systemic Risk Regulation:** Ensure businesses have access to diverse financial service providers helping to meet their credit, investment, risk management, and liquidity needs. Advance new proposals that increase access to the capital markets and push back against efforts that could limit access, including overly broad systemic risk regulations.

2. **Effective Corporate Governance Policies:** Fight for responsible corporate governance polices that benefit the long-term position of companies and shareholders and oppose special interest activist agendas unrelated to the interests of a business or investors.
3. **Investor Protection and Opportunity:** Work to make it easier for Americans to save and invest for their future by enhancing their access to investment options and advice while ensuring strong protections are in place.
4. **Consumer Credit and Choice:** Advocate for consumer protection and expanded access to responsible credit choices.
5. **Modern Financial Reporting:** Work for transparent financial reporting and disclosure policies to support capital formation.
6. **Business Creation and Growth:** Encourage policies that promote new business creation while facilitating the growth of existing businesses.

The ***2016 Agenda: Ensuring Competitive Markets and Preserving Access to Capital***, although not an exhaustive list, outlines the CCMC's priorities, fundamental ideals, and specific recommendations on areas that have the broadest impact on the end-users of the financial system. The recommendations below are designed to help policymakers build on what works, fix what does not, and address the issues that remain to be addressed. While there will be disagreements over individual rules and potential additional reforms, the CCMC will not be shy about pushing back on efforts to attack financial institutions and will engage in a vigorous debate about how to improve our financial regulatory system.

Americans—savers, consumers, investors, and businesses—depend on a growing economy supported by a healthy financial system. They are deeply concerned about what they see around them: unnecessarily burdensome regulation, declining economic growth rates, and the lowest labor participation rate in decades. The Chamber is committed to advancing the ***2016 Agenda*** to improve our well-functioning and robust capital markets and to give America's businesses the ability to compete globally and grow the economy.

Overview

The ***2016 Agenda: Ensuring Competitive Markets and Preserving Access to Capital*** outlines areas that have the broadest impact to the end-users of the financial system. These priorities stem from the CCMC's mission: a modern regulatory structure to support the innovative, fair, transparent, and efficient capital markets needed for America's businesses and workers to compete. This agenda covers a wide variety of topics—from access to credit to corporate governance to retirement security and financial reporting—these objectives present a combination of meaningful goals and practical changes in the current political environment. In addition to fundamental ideals, the CCMC is proposing discrete actions or recommendations that Congress, the Administration, and domestic and global regulators should make to ensure competitive markets and preserve access to capital.

Highlights

Encouraging Prudent Systemic Risk Regulation

Adjust approach for nonbanks—Advocate for the development of systemic risk regulations that address the specific business models of nonbank firms to better understand how systemically important financial institution (SIFI) designation achieves the goal of designation before a nonbank financial company is designated as a SIFI.

Creating a transparent process that encourages long-term growth

Further develop proxy firm guidance—Encourage the SEC staff to build upon prior efforts to provide proxy advisory firm guidance that creates transparent procedures to create advice and recommendations and regulate conflicts of interests.

Promoting retirement security

Make it easier for Americans, particularly those employed by small businesses, to save and invest—Call on the Department of Labor (DOL) to modify its fiduciary rule to ensure access to all types of investment products and services, preserving choice for small businesses and individuals by ensuring that the sellers carve-out applies to advisors of all plans and ensuring that the best interest contract extension is implementable.

Encouraging the growth of credit and choice for consumers

Encourage consumer friendly dispute resolution—Stop the Consumer Financial Protection Bureau (CFPB) from eliminating pro-consumer pre-dispute arbitration clauses in consumer financial contracts.

Developing consistency in financial reporting regulation

End regulation through enforcement—Encourage a dialogue amongst regulators, auditors and businesses to facilitate financial reporting reliability and relevance in **a continued effort to end regulation through enforcement.**

Facilitating capital formation

Continue to enhance capital formation and business creation—**Advocate for commonsense measures, similar to those contained in the JOBS Act, to continue to open up private and public capital markets for American businesses**, providing them businesses with the ability and resources needed to grow.

2016 Agenda

Modern Regulatory Systems and Reasonable Systemic Risk Regulation

Encouraging Prudent Systemic Risk Regulation

Adjust approach for nonbanks

Advocate for the development of systemic risk regulations that are tailored to the specific business models of nonbank firms to better understand how systemically important financial institution (SIFI) designation achieves the goal of designation before a nonbank firm is designated as a SIFI.

Establish a clear process for designation

Urge the Financial Stability Oversight Council (FSOC) to establish clear criteria and processes for SIFI designation as well as an off-ramp for SIFIs to become undesignated.

Improve tools for unwinding failing institutions

Encourage Congress to improve the reorganization chapter of the Bankruptcy Code to better accommodate the resolution of large and complex institutions.

Encourage alternative methods for reducing risk

Allow companies under consideration as a SIFI the opportunity to de-risk; similarly, provide the primary regulator with the opportunity to enhance regulations of an activity or financial product as a means to offset systemic risk rather than the designation of a specific company.

Tailor systemic risk thresholds for mid-size banks

Encourage reform of systemic risk and regulatory thresholds to ensure that small and mid-size banks are not subject to enhanced regulation that could harm their ability to provide financing to Main Street businesses.

Promote regulatory coordination

Ask that the FSOC promote regulatory coordination across agencies and encourage federal financial regulators to consider whether new rules are necessary or whether redundant regulations need to be streamlined or eliminated.

Require an economic impact analysis

Require that the FSOC conduct an economic impact analysis when the Council votes to proceed with SIFI designation.

Increase threshold for designation

Recommend changing the FSOC's voting threshold to an affirmative vote of at least three-quarters of the Council.

Require use of verified empirical data

Urge the FSOC to use empirical data verified by the subject company to conduct a vulnerability analysis and to determine whether the company poses a threat to the stability of the U.S. financial system before designating a nonbank firm as a SIFI.

Clarify jurisdiction over nonbank entities targeted for designation

Request that the FSOC confirm if a nonbank company meets the legislative definition of predominantly engaged in financial activities to establish jurisdiction before it considers the company for designation as a SIFI.

Represent agency views

Advocate for reform of the FSOC voting structure so the view of the agency of the FSOC member (where applicable), rather than the individual FSOC member, is represented on the Council.

Allow FSOC to benefit from expertise

Encourage a strengthened role for the primary regulator in the systemic risk designation process.

Maximizing regulatory benefits

Require economic analysis

Call on all regulators to perform an economic analysis —published and subject to comment— to identify unforeseen consequences and ensure the least burdensome means of regulation when proposing a new regulation.

Correct unintended consequences

Advocate for a post-implementation requirement for new regulations to undergo an economic analysis two years after promulgation to assess the real-world costs and allow for a correction of unintended consequences.

Reducing unnecessary regulatory burdens

Analyze the impact of regulation on liquidity

Call for a study by regulators concerning the liquidity and market impacts of systemic risk regulations, Basel III, and the Volcker Rule to better understand where there are opportunities for improving the existing regulations.

Review data requests and streamline data collection

Call on the Office of Financial Research (OFR) to exercise its legislatively mandated powers to review data collection requests and systems of the various regulators and streamline collection systems and requests to avoid multiple requests and burdens on businesses.

Encourage open information flows

Call on regulators to create open and secure channels of communication between themselves and regulated entities to encourage the free flow of information and data necessary for regulatory tracking.

Calibrating systemic risk regulation

Adapt stress tests to individual institutions

Call on the Federal Reserve Board (FRB) to tailor bank stress tests to match the risk an individual institution poses to the financial system.

Balance risk-based requirements to encourage Main Street growth

Advocate for the proper calibration of bank capital, leverage, and liquidity requirements to balance risk-based requirements with lending and borrowing by banks, which is necessary to serve Main Street and grow the economy.

Follow the rules

Insist that regulators, including the FRB, follow established procedures, including notice and comment, when writing rules.

Protecting due process

Develop rules of practice to provide a system of due process for a fair and orderly enforcement system

Promote rule changes at the Securities and Exchange Commission (SEC) that provide for fair due process, including the right to discovery and deposition in administrative proceedings. And push for legislation that allows for a limited right of removal from administrative proceedings to district court.

Managerial and efficiency reforms

Provide for managerial expertise

Call on the SEC to create a Chief Operating Officer position with sufficient authority to oversee daily operations throughout the Commission.

Hire expertise needed to understand and regulate markets

Support expanding the breadth of staff expertise at the SEC so that the existing high level of legal and accounting competence is complemented by staff experts in capital markets operations and the business operations of regulated entities as well as financial economics.

Encourage cross-divisional communication

Encourage managerial reforms at the SEC in order to break down silos, attract talent, and develop systems to make the Commission a more effective securities regulator.

Ensuring access to affordable risk management

Reduce unnecessary data collection from end-users

Ask that data collection from nonfinancial end-users on swaps reporting not impose new or costly burdens.

Make permanent the current de minimis thresholds for "swap dealer" registration

Call on the Commodity Futures Trading Commission (CFTC) to make permanent the current de minimis thresholds for registration as a "swap dealer" in order to ensure market stability and the ability of end-users to access affordable risk management solutions.

Enhancing regulatory transparency and operations

Encourage regulatory advisory committee transparency

Advocate for making regulatory advisory committees, standard setters, and self-regulatory organizations (SRO) subject to the Federal Advisory Committee Act to enhance transparency in rulemaking and regulatory discussions.

Growing the availability of mortgage credit

Encourage private sector risk sharing

Encourage private sector participation through risk sharing to grow the availability of mortgage credit.

EFFECTIVE CORPORATE GOVERNANCE POLICIES

Creating a transparent process that encourages long-term growth

Further develop proxy firm guidance

Encourage the SEC staff to build upon prior proxy advisory firm guidance to increase oversight and create transparent procedures when developing advice and recommendations and regulate conflicts of interests.

Reform shareholder proposal practices

Call for reform to practices related to shareholder proposals under § 240.14a-8 and modernization of resubmission thresholds to preserve the interests of investors and long-term corporate strategies and while preventing governance systems from being used to advance narrow political and social agendas.

Enfranchise retail shareholders

Encourage client directed voting and high technology voting systems to increase retail shareholder participation in the shareholder process.

INVESTOR PROTECTION AND OPPORTUNITY

Promoting retirement security

Make it easier for Americans, particularly those employed by small businesses, to save and invest

Call on the Department of Labor (DOL) to modify its fiduciary rule to ensure access to all types of investment products and services, preserving choice for small businesses and individuals by ensuring that the sellers carve-out applies to advisors of all plans and ensuring that the best interest contract extension is implementable.

Advocate for sensible solutions that increase access to quality investment advice

Should DOL not make the necessary fixes to the fiduciary rule, ask Congress to correct the flawed DOL rule through bipartisan Congressional action establishing a fiduciary standard that protects investors while increasing access to quality investment advice.

Encourage regulatory coordination to avoid conflicting regulations and investor confusion

Appeal to regulators to work together when writing rules—such as the SEC, DOL, and the Financial Industry Regulatory Authority (FINRA) with their respective fiduciary rules—so that investors are not confused by conflicting or duplicative regulations.

CONSUMER CREDIT AND CHOICE

Encouraging the growth of credit and choice for consumers

Encourage consumer friendly dispute resolution

Stop the Consumer Financial Protection Bureau (CFPB) from eliminating pro-consumer pre-dispute arbitration clauses in consumer financial contracts.

Prohibit back-door regulation

Use every legal means to ensure the CFPB stays within its jurisdictional lanes and does not use untested legal theories to pursue its enforcement agenda.

Create opportunities for Bureau oversight

Empower the CFPB's ombudsman to exercise greater authority at the Bureau, including the ability to monitor press office statements for consistency with the CFPB's regulatory, supervisory, and enforcement activities. And support the creation of an independent inspector general for the CFPB.

Improve data collection

Work to establish appropriate limitations on the CFPB's massive data collection program, including restrictions on data sharing and usage, and to ensure that the CFPB has adequate cybersecurity safeguards and infrastructure.

Facilitate prospective guidance

Encourage the CFPB to create a robust framework for the provision of prospective guidance to consumer financial services providers, including no-action letter relief and the issuance of advisory opinions.

Encourage marketplace innovation

Highlight burdens to the development of new consumer financial products caused by regulatory uncertainty.

Plan for regulatory continuity

Support replacing the CFPB's single-director governance structure with a commission structure to foster a balanced approach to regulating and to foster institutional continuity when the directorship changes hands.

Mitigate duplicative and conflicting regulations

Urge the CFPB's effective coordination with safety and soundness and other consumer protection regulators to ensure that the CFPB's activities do not duplicate or are inconsistent with other regulators' actions.

Utilize the appropriations process

Ask Congress to replace the CFPB's current funding mechanism with one that puts the Bureau on regular congressional appropriations to ensure greater transparency and oversight of the CFPB.

Examine regulatory impacts to consumer credit

Encourage the CFPB to examine how its proposed regulations and intended enforcement activities will impact consumer credit, particularly for consumers on the margins of the financial system.

Improve consumer education efforts

Advocate for the rationalization of the CFPB's consumer complaint database so that its data and conclusions are more helpful to consumers and businesses.

MODERN FINANCIAL REPORTING

Developing consistency in financial reporting regulation

End regulation through enforcement

Encourage a dialogue amongst regulators, auditors, and businesses to facilitate financial reporting reliability and relevance in a continued effort to end regulation through enforcement.

Develop a common definition of materiality

Demand that the SEC, the Financial Accounting Standards Board (FASB), and Public Company Accounting Oversight Board (PCAOB) define and use a common definition of materiality to aid standard setting and to determine when restatements should be triggered.

Define a standard setting process

Advocate for a transparent and accountable standard setting process that utilizes procedures as defined in the Administrative Procedures Act.

Encourage a single global reporting system

Support the continuation of accounting convergence projects, in coordination with FASB, as a means to achieve a single global reporting system.

Proactively identifying problems and solutions

Support the identification of problems within the financial reporting system

Call for the establishment of a financial reporting forum of regulators, standard setters, investors, and businesses.

BUSINESS CREATION AND GROWTH

Facilitating capital formation

Continue to enhance capital formation and business creation

Advocate for commonsense measures, similar to those contained in the JOBS Act, to continue to open up private and public capital markets for American businesses, providing them with the ability and resources needed to grow.

Update disclosure systems to meet the needs of 21st century businesses and investors and modernize existing regulations

Promote a securities disclosure regime that gives meaningful information to investors and does not unnecessarily burden businesses, especially startups and emerging growth companies, with costly and needless paperwork.

Create a small business advocate

Building on the successes of the JOBS Act, support the creation of a small business advocate position at the SEC who has the authority to promote reforms that will help small businesses attract the capital necessary to grow, innovate, and create jobs.

Fix disclosures to make it them more effective

Identify outdated regulatory requirements and advocate for reform. And encourage the development of corporate disclosures and financial reports that provide investors with more meaningful and real time information that is decision useful.

Benchmarking U.S. competitiveness

Assess U.S. competitiveness

Call on the OFR to track the impact of the Dodd-Frank Act on domestic and international financial markets and assess the competitiveness of the U.S. relative to other developed economies.

Center for Capital Markets Competitiveness®

1615 H STREET, N.W. | WASHINGTON, DC 20062