FAR

FIX. ADD. REPLACE.

AGENDA 2015

Ensuring Competitive Markets and Preserving Access to Capital

THE SPIRIT OF ENTERPRISE · U.S. CHAMBER OF COMMERCE

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

2015 FAR Agenda: Ensuring Competitive Markets and Preserving Access to Capital

Ten years ago, bi-partisan leaders, including the U.S. Chamber of Commerce (Chamber) recognized that the United States' financial regulatory system was out of date and harming America's competitiveness in an ever increasing global economy. These bi-partisan voices called for a complete overhaul of our financial regulatory architecture, moving it from the days of the Model T into the 21st century. Since the 2008 financial crisis, some efforts have made limited progress to fix these flaws, but the overall responses—legislative and regulatory—have made the regulatory system more cumbersome, more inefficient, and a decade older.

The U.S. economy is still hitting below its long-term growth potential despite exhibiting positive signs of improvement. Decision makers in business and government have the rare opportunity to revisit the basics of our capital markets framework to optimize the financial regulatory structure.

America needs transparent, liquid, efficient, and well-regulated markets to ensure job creators have access to diverse sources of capital and the tools to manage their financial risk. The test of any financial system should be whether it is succeeding in satisfying these demands. Likewise, the test of any financial regulatory system should be whether it is helping achieve these goals by providing clear, predictable rules and a level playing field for all market participants—from the globally competitive multinational firm to the school teacher saving for retirement.

The Chamber established the Center for Capital Markets Competitiveness (CCMC) to support these goals by advancing America's global leadership in capital formation by supporting capital markets that are the most fair, transparent, efficient and innovative in the world. Since 2013, CCMC has published the annual *Fix. Add. Replace. (FAR) Agenda* outlining and prioritizing improvements to America's financial regulatory structure—a key factor in creating and maintaining globally competitive capital markets and facilitating economic growth. While there will be honest disagreements about particular aspects of financial regulation and reform, almost everyone can agree that today's financial regulatory system is **FAR** from optimal.

The ***2015 FAR Agenda*** lays out the following questions:

> **FIX:** Are there areas where financial regulations are not working as intended?
>
> **ADD:** What additional steps should we take in areas that were left unaddressed by post-crisis reforms?
>
> **REPLACE:** Are there regulations that need to be replaced because they do not work?

Main Street businesses depend on a healthy financial system and, as a result, care deeply about the outcome of financial regulatory reform and the issues raised in this report. The agenda we are proposing is not an exhaustive list of all the challenges or necessary changes, but it does reflect areas that have the broadest impact on the American economy and the millions of businesses that rely on effective capital formation.

FIX

The financial regulatory structure in the U.S.is based on a foundation built during the 1930's and in some cases as far back as the Civil War. This system has become more complicated, cumbersome, and antiquated since the crisis, while leaving gaps between regulations and creating unintended consequences. As regulators implement the statutory requirements mandated by The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) and other initiatives to address the financial crisis, they have been constrained by the rigidity of the statute in some areas or misinterpreted Congressional intent in others. And, in some cases regulators have simply created unworkable regulatory regimes. CCMC is advocating for the following statutory and regulatory **fixes** to ensure well-functioning and robust capital markets.

CFPB: Preserve Consumer Choice and Access to Credit

- Ensure that the Consumer Financial Protection Bureau (CFPB) protects and informs consumers but does not limit consumer choice and access to capital by dictating credit allocation.
- End regulation through enforcement and set clear, economically sound rules of the road that allow companies to innovate and serve their customers.
- Preserve risk-based pricing as the most efficient means for lowering the cost of credit for borrowers and expanding credit availability.
- Ensure the preservation of pre-dispute arbitration clauses in consumer financial agreements, as they offer consumers the cheapest, most efficient means of resolving their disputes.

CFPB: Encourage Clarity, Modernization, and Transparency

- Create a fair and open advisory opinion and no action process to reduce uncertainty for financial services innovators.
- Define the "abusive" standard and enable compliance by requiring the CFPB to conduct a transparent process to define the standard through a policy statement.

- Establish appropriate limitations around data collection, sharing, and usage, while requiring that the Bureau improve its cyber security infrastructure.
- Stop the CFPB from publishing unverified consumer complaint narratives.

CFPB: Establish Checks and Balances

- Replace the single director leadership structure at the CFPB with a bipartisan commission to ensure continuity and a balanced approach to policymaking.
- Ensure effective coordination with safety and soundness and other consumer protection regulators to guarantee that CFPB regulations do not duplicate or conflict with other regulations or policies.
- Restore Congressional funding oversight by bringing the CFPB's budget within the formal appropriations process.
- Stop the CFPB's unworkable attempt to set interest rates in auto lending.

Derivatives: Ensure End-Users are Able to Manage Financial Risks

- Clarify that non-financial companies that use centralized treasury units (CTUs) to hedge risk will be eligible for the end-user clearing and margin exceptions.
- Limit the extraterritorial reach of domestic derivatives regulation to ensure U.S. dealers are not disadvantaged overseas and that Main Street non-financial companies' cross-border counterparty relationships are not undermined by overlapping regulation.
- Rationalize the rules for reporting swaps to ensure they are harmonized internationally, and are limited to data that regulators can realistically use for market monitoring.

FSOC Opportunity: Coordinate Regulatory Efforts Across the System

- Monitor and mitigate the cumulative impacts of regulations across the entire system to ensure that they foster capital formation and market efficiency.
- Identify and fill regulatory gaps to ensure the financial system is well regulated.

FSOC Reform: Enhance Transparency and Communication Through Structural Reforms

- Reform the Financial Stability Oversight Council (FSOC) structure so the view of the agency (where applicable), rather than just the individual FSOC member, is represented on the Council.
- Require an economic analysis to be performed by the FSOC when the Council votes to proceed with Systemically Important Financial Institution (SIFI) designation or any other regulation.
- Change the voting threshold to an affirmative vote of at least three quarters of the FSOC and strengthen the role of the primary regulator in the systemic risk process.
- Eliminate conflicting and duplicative data requests on an inter and intra agency basis by streamlining and coordinating data collection from FSOC and the Office of Financial Research (OFR)

Systemic Risk Regulation and Designation: Establish Due Process

- Establish jurisdiction over any non-bank company that the FSOC considers for designation as a SIFI.
- Ensure that systemic risk regulation and orderly liquidation authority for non-bank financial companies are not bank-centric but are tailored to the business model of a specific company.
- Create a clear path for un-designation by having the FSOC determine the appropriate criteria and process for non-bank SIFIs to reverse their designation.
- Fulfill the intent of the Dodd-Frank to reform systemic risk and regulatory thresholds to insure that mid-size and small banks and credit

unions are not subject to enhanced regulation that could harm their ability to provide financing to Main Street businesses.

Accounting Convergence: Provide Accurate and Useful Information for Investors

- Ensure the final lease accounting standard being considered by the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) accurately reflects economic activity and provides useful information to investors.

PCAOB: End Regulation through Enforcement

- End regulation through enforcement by creating a dialogue with the Public Company Accounting Oversight Board (PCAOB) to ensure that audited financial statements provide investors and businesses with decision useful information.
- Establish and follow due process procedures to meet the needs of investors and avoid rote check the box policies that fail to meet these goals.
- Establish a definition of "audit failure" predicated upon materiality and how that applies to the restatement of financial reports.

ADD

The current regulatory structure is failing to meet the needs of consumers, businesses, and the economy. Too often regulators fail to coordinate or provide coherent guidance and oversight for the financial system. CCMC believes that to ensure our markets are the most competitive in the world and that our system is better positioned to foresee the next crisis, the following must be **added** to the financial regulatory agendas of the Administration and Congress.

Domestic Regulatory Coordination: Improve The Regulatory Process by Consolidating or Coordinating Regulators

- Ensure greater regulatory coordination on key areas of financial regulation, such as capital requirements, derivatives and systemic risk, to ensure compatible approaches to regulation across the system.
- Consolidate the Securities Exchange Commission (SEC) and Commodities Futures Trading Commission (CFTC) to create a streamlined and rational regulatory structure.

Global Regulatory Coordination: Ensure International Regulatory Efforts Are Workable Across Jurisdictions

- End efforts to apply domestic regulations extraterritorially and create mechanisms to ensure effective coordination among international regulators to solve cross-border issues.

International Financial Markets: Develop Market-Based Financing

- Encourage the global development of market-based financing to ensure diverse financing systems that businesses need to grow and spur economic growth.

Economic Analysis: Understand the Economic Impact of Regulation

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

- Ensure that regulators, particularly banking regulators, perform statutorily required economic analysis.
- Extend the requirements for enhanced economic analysis under the Unfunded Mandates Reform Act and Executive Orders 13563 and 13579 to all independent agencies.

Capital Standards: Harmonize Approaches to Capital and Leverage Requirements to Provide Stability and Growth

- Domestic and global banking regulators should develop a harmonized approach to capital, leverage, and liquidity requirements as a pro-growth means of providing stability in a risk-based free enterprise system.
- Bank capital standards should balance both the needs of financial stability and provide the resources needed for economic growth.
- Ensure that the efforts of the International Association of Insurance Commissioners (IAIS) to set capital standards for insurance are done in a deliberative, non-rushed manner, and the use of any such standard and the economic impact is well understood before it is developed.

SEC Modernization: Create a World-Class 21st Century Securities Regulator

- Link increased funding and resources to timely and clear progress towards achieving a transformational reform plan to make the SEC a better managed and streamlined agency that is an effective cop on the beat.
- Enhance the existing enforcement programs to ensure fair and consistent examinations and investigations that lead to more effective regulations and law enforcement.

Disclosure Reform: Provide Investors with Clear and Useful Information

- Develop a disclosure framework that addresses the phenomenon of "information overload" and ensures that investors are provided with the information they need to make informed investment and voting decisions.
- Ensure that the materiality standard remains the guiding principle for determining what is disclosed in SEC filings.

Financial Reporting: Further Improve Systems to Better Serve All Users of Financial Statements

- Require the PCAOB and Financial Accounting Standards Board (FASB) to conduct a cost-benefit analysis and follow the transparency requirements of the Administrative Procedures Act (APA) and Federal Advisory Committee Act (FACA) when developing standards.
- Create a financial reporting forum made up of regulators, standard-setters, investors, and businesses to proactively identify problems within the financial reporting system and suggest solutions.

Proxy Advisory Firms: Ensure Transparent, Evidence Based Standard Setting

- Hold proxy advisory firms, such as Institutional Shareholder Services and Glass Lewis, to standards that move the industry towards a more accountable, transparent, and evidence-based policymaking process while eliminating core conflicts of interest.
- Require proxy advisory firms to disclose if a client is a sponsor or supporter of a shareholder proposal when the firm is making a recommendation.
- Ensure that proxy advice correlates to the economic interest of their clients and does not take a "one-size-fits all approach.

Private Sector Housing Financing: Allow the Private Sector to Return to the Housing Market

- Enact reform that will enable a robust and responsible return of the private sector to the broader housing finance market.

REPLACE

CCMC is committed to keeping the U.S. as the global leader in capital formation. To accomplish this goal, some recent regulatory proposals need to be **replaced** or abandoned because they undermine rather than strengthen capital formation and well-functioning markets. The following issues must be resolved to ensure our competitiveness.

Fiduciary Standard: Preserve Choice and Affordability for Retail Investment and Retirement Savings

- Ensure that investors have both the appropriate safeguards and the freedom of choice in how they save for retirement.
- Codify the current obligations of broker-dealers with respect to retirement accounts to preserve individuals' freedom of choice that best meet the needs of an investor saving for retirement and ensure access to affordable financial services, advice, and resources.
- Coordinate related fiduciary rulemaking at the SEC and Department of Labor (DOL) to avoid regulatory conflict and stakeholder confusion, and ensure that any resulting rulemaking from the DOL fully considers and incorporates modifications that accounts for the existing regulatory regime administered by the SEC and FINRA.
- Ensure that only parties in interest to ERISA-based plans are subject to ERISA's fiduciary standard.

Corporate Governance: Protect Investors from Special Interest Agendas

- Remove corporate governance and executive compensation disclosures, such as Pay-Ratio, that violate the first amendment by shaming businesses and not provide decision-useful information to investors.
- Support appropriate disclosures that promote long-term shareholder value and allow for reasonable risk-taking.
- Enfranchise retail shareholders so they have a voice in the governance of businesses they invest in.