FAR
Fix. Add. Replace.
AGENDA 2013

Ensuring Competitive Markets and Preserving Access to Capital

Center for Capital Markets Competitiveness®

FAR Agenda: Ensuring Competitive Markets and Preserving Access to Capital

In 2007, the U.S. Chamber of Commerce established the Center for Capital Markets Competitiveness (CCMC) to advance America's global leadership in capital formation by supporting capital markets that are the most fair, transparent, efficient, and innovative in the world.

Economic growth and job creation are fueled by access to diverse sources of capital—from many forms of investors and credit providers. From a budding entrepreneur maxing out his credit card to start a new business to the growing company accessing the public markets to expand, every business relies on a well-functioning financial system to provide credit, liquidity, investment, and financial risk management.

Financial regulatory reform was long overdue. The U.S. financial regulatory system dates back to the reforms made after the Great Depression. Prior to the 2008 financial crisis, the CCMC called for reform with its bipartisan blueprint to modernize this outdated regulatory architecture and eliminate gaps, duplication, and regulatory dead-zones.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) sought to address some of these challenges by bringing more transparency to derivatives and improving consumer protection. And, yet, it largely left the existing byzantine regulatory structure intact—adding new layers and agencies, including the Financial Stability Oversight Council, the Consumer Financial Protection Bureau, and the Office of Financial Research. All told, 20 separate federal agencies are left with the task of implementing more than 400 Dodd-Frank rules as well as dozens of studies and reports.

Over two and a half years into Dodd-Frank implementation, the complexity and on-going duplication is challenging both regulators and the regulated. Rules requiring multiple agencies to act in coordination are either delayed, considered out of sequence, or producing outright conflicts. For example, the Commodity Futures Trading Commission (CFTC) and the prudential banking regulators have proposed fundamentally different approaches to "margining" over-the-counter swaps that non-financial companies use to hedge their risk. Because the discrepancy is based on different interpretations of Congressional intent rather than regulators moving ahead in unison, it appears that Congress will have to intervene to settle this dispute—another unnecessary delay.

An additional example: The Volker Rule has been appropriately delayed because nobody can agree on a simple definition of the problem they are trying to solve!

Faced with uncertain and conflicting rules of the road as well as skyrocketing compliance costs, financial firms are gradually making decisions that impact their ability to serve customers either by eliminating products or by getting out of certain markets altogether. And, rather than being able to invest in new ways to respond to customer needs, many financial firms are either focused almost exclusively on implementing the regulatory changes or simply waiting on the sidelines for more clarity.

It is time to take a hard look at where we stand and answer some basic questions:

- Are there areas where Dodd-Frank simply isn't working as intended or where regulators need further clarity from Congress? How do we **fix** this?
- What **add**itional steps should we take in areas that were left unaddressed in Dodd-Frank? For example, should we consolidate regulators or at a minimum ensure more effective coordination among the dozens of financial regulators?
- Are there provisions of Dodd-Frank that simply don't work and need to be **replace**d?

While there will be honest disagreements about particular provisions, almost everyone can agree that today's financial regulatory structure and oversight is still **F.A.R.** from what is needed.

In an effort to address these challenges constructively, the CCMC has prepared the following list of concerns we believe need to be addressed. The "Fix, Add, Replace (FAR)" agenda we are proposing is not an exhaustive list of all the challenges or changes needed, but it does reflect the areas that have the broadest impact on the American economy and the millions of businesses that rely on an effective capital formation system.

Legislative and Regulatory Fixes to Dodd-Frank and Beyond

As with any broad legislation, Dodd-Frank has left gaps and created unintended consequences. In addition, as regulators have scrambled to meet statutory deadlines, they have felt 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, robust capital markets.

CFPB: Establish Fundamental Checks and Balances

- Replace the single director leadership structure at the Consumer Financial Protection Bureau (CFPB) with a bipartisan commission to ensure continuity and a balanced approach to policymaking.
- Restore appropriate Congressional oversight by bringing the CFPB's budget within the formal appropriations process, similar to most independent agencies.
- Ensure more effective coordination with safety and soundness regulators to guarantee that CFPB regulations do not conflict with other regulations or otherwise undermine the diversity and soundness of the banking system.

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

- Enact legislation that would exempt non-financial end-users from onerous, costly, and unnecessary margin requirements, consistent with the Congressional intent when Dodd-Frank was passed.
- Ensure that purely internal, inter-affiliate derivatives transactions are exempt from clearing, margin, and other requirements more appropriately applied to market-facing swaps, consistent with the Congressional intent when Dodd-Frank was passed.
- Clarify that non-financial companies that use centralized treasury units to hedge risk will be eligible for the end-user clearing exception.
- Limit the extraterritorial reach of domestic derivatives regulation to ensure U.S. dealers are not disadvantaged overseas and to ensure that Main Street non-financial companies' cross-border counterparty relationships are not undermined by overlapping regulation.

FSOC: Enhance Transparency and Better Coordination among Financial Regulators

- Support efforts to increase the transparency of Financial Stability Oversight Council (FSOC) when it acts in a regulatory capacity.

- Restore appropriate Congressional oversight by bringing the Office of Financial Research's (OFR) budget within the formal appropriations process.
- Create a "regulatory conflict" window at the FSOC with the goal of streamlining and ending duplicative regulatory initiatives and structures and harmonizing conflicting regulations among agencies.
- Ensure that the OFR coordinates and streamlines data collection among agencies to prevent the duplicative collection of information.
- Safeguard the confidentiality of proprietary and consumer information gathered from data requests and examinations across all regulators.
- Prohibit final systemically important financial institution (SIFI) designations for non-bank financial companies until all systemic risk rules are finalized.
- 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 to prevent policies that may cause unnecessary market disruptions.
- Reform FSOC so that the views of the agencies, and not the Chairman of agencies sitting as individuals, are represented on the Council.

Money Market Mutual Fund Reform: Preserve and Further Strengthen an Essential Liquidity Management Product for Companies, States, and Non-Profits

- Advocate that any regulatory changes to Money Market Mutual Funds (MMMFs) seek to strengthen these funds while preserving their utility to customers.
- Ensure all additional reforms effectively address clearly defined problems and conduct a thorough analysis of potential reforms to MMMFs to understand the broader economic impacts and the company specific operational impacts, notably the tax and accounting issues that would ensue from floating the Net Asset Value.
- Continue to press for the Securities and Exchange Commission (SEC) to be the primary regulator for this securities product responsible and for implementing any additional reforms.

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

- Preserve various levels of "fiduciary" standard—suitability standard, fiduciary standard of care, and ERISA fiduciary duty—so that investors have the option to determine level of service and cost of investments.
- Coordinate related fiduciary rulemakings at the SEC and Department of Labor (DOL) to avoid regulatory conflict and stakeholder confusion.
- Ensure that only plan sponsors and service providers to ERISA-based plans are subject to ERISA's fiduciary duty.

Whistleblower Regulation: Ensure Enhanced Whistleblower Programs Do Not Undermine Strong Company Compliance Programs

- Amend the SEC and CFTC's whistleblower programs to make any wrongdoer convicted of a crime ineligible for an award.
- Amend the SEC and CFTC's whistleblower program to provide consistency with Sarbanes-Oxley required compliance programs by requiring internal reporting of the alleged misconduct, either before or simultaneously reporting the information to the various Commissions.

The Unresolved

CCMC believes that to ensure our markets are the most competitive in the world and 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.

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

- Develop a bold and clear plan on how to make rulemaking, supervision, inspections, and enforcement operations within SEC more effective.
- Appoint a deputy chairman to develop and implement a transformational reform plan to break down silos, develop priorities for agency action, and instill managerial accountability and discipline.
- Link increased funding and resources to timely and clear progress towards achieving the plan.
- Put in place procedures to ensure that necessary technology improvements can be effectively incorporated in furthering the SEC's mission.
- Reform hiring practices to acquire the talent needed to regulate complex markets and products.

Regulatory Streamlining and Structural Reform: Improve Regulatory Process to Consolidate or Better Coordinate Regulators

- Extend the requirements for cost-benefit analysis under Executive Orders 13563 and 13579 to all independent agencies.
- Make financial services regulatory agencies and bodies subject to the Unfunded Mandates Reform Act.
- Create systems in all financial regulatory agencies to regularly review and update existing regulations and, if necessary, sunset obsolete regulations.

- Create a post-implementation requirement for a new regulation to undergo a cost-benefit analysis 2 years after promulgation to assess the real-world costs and allow for a correction of unintended consequences.
- Streamline, rationalize, and consolidate regulatory structure by consolidating the SEC and CFTC and explore potential additional changes.

CFPB: Define New "Abusive" Standard to Enable Effective Compliance

- Require the Consumer Financial Protection Bureau (CFPB) to conduct a transparent process to define the "abusive" standard through a policy statement—similar to the statement issued by the FTC defining the Commission's "unfairness" authority.

Restore Securitization Markets

- Address issues that continue to impede the development of liquid, efficient, and well-regulated securitization markets that are critical to efficient debt financing for businesses.

Global Regulatory Coordination: Ensure International Regulatory Efforts Do Not Produce Conflicting Regulations That Are Unworkable

- Ensure greater regulatory coordination on key areas of financial regulation, such as derivatives and systemic risk to ensure a level playing field and globally compatible approaches to regulation when appropriate.
- End efforts to apply domestic regulations extraterritorially and create mechanisms to ensure effective coordination among international regulators to resolve cross-border issues.

Corporate Governance: Ensure Transparent, Evidence-Based Standard Setting

- Hold proxy advisory firms, principally 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.

Enfranchising Retail Investors: Make it Easier Rather than Harder for Average Investors to Vote Their Shares

- Promote retail investor participation in proxy voting through examining possible interpretive guidance to give retail shareholders access to Client Directed Voting and greater use of enhanced broker internet platforms, and encouraging greater use of web-based communications and technology.
- Educate retail investors on the distinction between the roles and the fiduciary responsibilities of investment advisors and broker-dealers.

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

- Create a consistent global standard for accounting and auditing so investors around the globe are using the same financial reporting "language" and to ensure better investment decisions can be made.
- Require the Public Company Accounting Oversight Board (PCAOB) and Financial Accounting Standards Board (FASB) to follow transparency requirements of the Administrative Procedures Act (APA) and Federal Advisory Committee Act (FACA) in developing standards and conduct cost-benefit analysis of proposed 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.

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.

The Unfixable

The Center for Capital Markets Competitiveness is committed to keeping the United States as the global leader in capital formation. To accomplish this goal, some recent regulatory proposals, including a handful of provisions in Dodd-Frank that undermine rather than strengthen capital formation and well-functioning markets, need to be **REPLACED** or abandoned. CCMC believes the following issues must be resolved to ensure our competitiveness.

The Volcker Rule: The Wrong Approach

- Repeal the Volcker Rule and replace it with higher capital requirements for financial services firms that engage in proprietary trading.

Corporate Governance: Ensure Compliance Requirements Add Shareholder Value and Don't Discourage Companies from Accessing Public Markets

- Repeal Conflict Minerals and Resource Extraction rules that place costly burdens on American businesses while failing to achieve foreign policy objectives. Empower appropriate foreign policy apparatus to resolve international conflicts.

- Support appropriate corporate governance and executive compensation provisions and disclosures that promote long-term shareholder value and allow for reasonable risk-taking while replacing ones, such as CEO-Chairman and Pay-Ratio disclosures, that do little for shareholders.

Financial Reporting: Mandatory Auditor Rotation Is Unworkable

- U.S. and foreign regulators have been considering a mandatory audit firm rotation, which would reduce audit quality, diminish the role of audit committees, increase the incidence of undetected fraud, and raise costs. Regulators on both sides of the Atlantic should abandon this proposal.

Financial Transaction Tax: Stop Disincentives for Investment and Retirement Savings

- Oppose legislative and regulatory actions that would impose a tax on financial transactions, disproportionally hurting Main Street investors and the ability of businesses to raise capital.