FAR

Fix. Add. Replace.

AGENDA 2014

Ensuring Competitive Markets and Preserving Access to Capital

Center for Capital Markets Competitiveness

2014 FAR Agenda:
Ensuring Competitive Markets and Preserving Access to Capital

America needs transparent, liquid, efficient, and well-regulated markets to ensure job creators have access to diverse sources capital and the tools needed to manage their financial risks and liquidity needs. The ultimate test of any financial regulatory reform should be if it is helping achieve these goals by providing clear, predictable rules and a level playing field for all market participants.

More than three and a half years into Dodd-Frank implementation, the law's complexity and overlapping, even conflicting, requirements are still challenging both regulators and regulated entities. Last year, the U.S. Chamber's Center for Capital Markets Competitiveness (CCMC) prepared the *Fix. Add. Replace. (FAR) Agenda* outlining areas of concern that needed to be addressed. Unfortunately, while progress has been achieved in some areas, other issues remain unaddressed—or even worse—have been exacerbated. This year's **FAR Agenda** seeks to answer the following basic questions:

- Are there areas where Dodd-Frank or other regulations are simply not 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?
- Are there regulations 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 **FAR** from what is needed.

In particular, there are still too many conflicting or diverging approaches between U.S. and global regulators. Some regulators are attempting to de-globalize the financial markets while others are trying to export regulations to other countries and refusing to accept other approaches.

Main Street businesses—from the small start-up to the mature global enterprise—have a large stake in the outcome of financial regulatory reform and the issues raised in this report. The **FAR Agenda** we are proposing is not an exhaustive list of all the challenges or the 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 Other Regulations

FIX.

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

FSOC Reform: Enhance Transparency and Achieve Better Coordination Among Financial Regulators

- Support efforts to increase the transparency of the Financial Stability Oversight Council (FSOC) when it acts in a regulatory capacity to ensure the Council benefits from public input to achieve a better regulatory outcome.
- Empower the FSOC to streamline or eliminate duplicative regulatory regimes and harmonize conflicting regulations among agencies. For example, limit the extent that regulators continue to issue divergent and conflicting regulations.
- Reform the FSOC structure so the view of the agency and not the individual FSOC member is represented on the Council.
- 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.
- Require a cost-benefit analysis to be performed by FSOC when the Council votes to proceed with a Systemically Important Financial Institution (SIFI) designation or any other regulation.

Systemic Risk: Reform the Designation Process by Establishing Clear Rules of Due Process

- 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.

- Create a path for un-designation. The FSOC should determine the appropriate criteria and processes for nonbank SIFIs to reverse their designation and no longer be subject to enhanced prudential standards and heightened supervision by the Federal Reserve.

OFR: Strengthen Evidence-Based Analysis

- Implement appropriate Congressional oversight by bringing the Office of Financial Research's (OFR) budget within the formal appropriations process.
- Improve the quality and process of the OFR's analyses and reports to better inform the FSOC. For example, require the OFR to undergo a notice-and-comment process to help inform research.
- Ensure that the OFR coordinates and streamlines data collection among agencies to prevent duplicative collection of information and safeguard the confidentiality of proprietary and consumer information gathered from requests and examinations across all regulators.

CFPB: Preserve Consumer Choice and Access to Credit

- Ensure the Consumer Financial Protection Bureau (CFPB) protects and informs consumers and does not limit consumer choice and access to credit by dictating how credit will be allocated.
- Require the CFPB to follow fair, transparent processes, including notice-and-comment periods, when substantially altering or creating new rules.

CFPB: Establish Structural 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.
- Restore Congressional funding 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.

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

- Ensure further regulatory changes to Money Market Mutual Funds (MMMFs) seek to strengthen these funds while preserving their utility to investors and issuers.
- Target reforms so they effectively address clearly defined problems and conduct a thorough analysis of potential reforms to MMMFs to understand the broader economic impacts.
- Ensure reforms take into account company specific operational impacts, notably the accounting, tax, and operational issues that would ensue from floating the net asset value.

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

- Enact bi-partisan legislation (which passed the House 411-12 and has 20 cosponsors in the Senate) to exempt non-financial end-users from onerous, costly, and unnecessary margin requirements, 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.
- Ensure that the Federal Reserve's review of Bank Holding Companies' authority to engage in commodities activities does not lead to restrictions that will impede end-users' ability to hedge their commodities exposures.

The Volcker Rule: Fixing Unintended Consequences and Ensuring Uniform and Transparent Implementation

- Establish a marketplace participants working group to work with regulators to identify unintended consequences and craft effective solutions before the end of the conformance period.
- Harmonize, amongst the five separate regulators, the enforcement, interpretation, and implementation of the Volcker Rule.

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

- Preserve individuals' ability to save for retirement through access to affordable saving products.
- Coordinate related fiduciary rulemakings at the Securities and Exchange Commission (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 Commodity Futures Trading Commission's (CFTC) whistleblower programs to make any wrongdoer convicted of a crime ineligible for an award and to provide consistency with Sarbanes-Oxley compliance programs by requiring internal reporting of the alleged misconduct, either before or simultaneously reporting the information to the various Commissions.

The Unresolved

ADD.

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.

Proxy Advisory Firm Transparency and Reform: 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.
- 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.

Enfranchise 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 encourage greater use of web-based communications and technology, such as enhanced broker internet platforms
- Educate retail investors on the distinction between the roles and the fiduciary responsibilities of investment advisors and broker-dealers.

Corporate Governance: Provide Investors With Decision-Useful Information

- Develop a disclosure framework to prevent information overload from multiple overlapping and sometimes contradictory reporting and disclosure requirements and standards.

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

- Establish a definition of audit failure predicated upon materiality and the need to restate financial reports.
- 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 the transparency requirements of the Administrative Procedures Act (APA) and Federal Advisory Committee Act (FACA) when developing standards and conduct a 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.
- Supplement existing guidance and coordination to ensure that the SEC, FASB, and PCAOB use a common definition of materiality.

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.

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.

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

- Ensure that regulators follow existing statutorily required economic analysis such as the Riegle Act.
- Extend the requirements for enhanced cost-benefit analysis under the Unfunded Mandates Reform Act and Executive Orders 13563 and 13579 to all independent agencies.
- 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 two 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.

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.

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

- Enhance the existing enforcement programs to ensure fair and consistent examinations and investigations that lead to more effective regulations and law enforcement.
- 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 a transformational reform plan.
- Put in place procedures to ensure that necessary technology improvements can be effectively incorporated in furthering the SEC's mission.

The Unfixable

Replace.

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.

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 Pay-Ratio disclosures, that provide little value to shareholders.

Financial Reporting: Mandatory Auditor Rotation Is Unworkable

- U.S. and foreign regulators have been considering 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.