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Undermining Dodd-Frank:

A CRITICAL REVIEW OF THE 2015 "FIX. ADD. REPLACE. (FAR)" AGENDA OF THE CENTER FOR CAPITAL MARKET COMPETITIVENESS AT THE U.S. CHAMBER OF COMMERCE

Acknowledgments

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Introduction

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) was a reaction to the greatest financial crisis in the United States since the Great Depression. The Great Recession was fueled by lax oversight, fraud, and lack of regulation. Dodd-Frank sought to address many of the glaring shortcomings of the previous system of financial regulation. It gave federal officials great authority over banking, securities and commodity futures regulations. It created a new consumer finance regulator. It established a regulatory framework for swaps transactions. It provided a mechanism for the orderly liquidation of non-bank financial institutions and fashioned a systemic risk council to supervise large banks and other systemically important financial institutions

The passage of Dodd-Frank was a defeat for big businesses that lobbied against many of the provisions, and demonstrated that moneyed interests are not always the victors.

However, since its enactment five years ago, the business community and Dodd-Frank opponents on Capitol Hill (who are frequently supported by the business community) have sought to repeal or weaken many important provisions, or starve regulators of funds necessary to effectively implement the law.

The U.S. Chamber of Commerce (Chamber) is a leading opponent of Dodd-Frank and it has routinely advocated or supported efforts to roll back many of the protections embodied by financial reform law in the name of U.S. competitiveness and helping small businesses obtain needed credit.

Recently, the Center for Capital Markets Competitiveness (Center) at the Chamber issued its third "Fix. Add. Replace. (FAR)" Agenda in which it identified 21 overarching priorities. The 2015 FAR Agenda includes nine "Fix" priorities, ten "Add" priorities and two "Replace" priorities. Within these objectives are 56 more specific recommendations. The Chamber's FAR Agenda outlines and prioritizes the trade association's sought-after objectives for financial regulatory reform.

This paper will summarize each of these priorities and recommendations and provide some context relating to the actions taken by the Chamber to advance its agenda. Where the Chamber has issued a statement, submitted a comment or publicly opined on a specific recommendation alone, this paper will provide a separate analysis of the recommendation. Where Chamber commentary is more broad-based in nature, this paper will provide more general views.

Ultimately, the Chamber's views tend to be deregulatory in nature. As long as regulations allow companies to have unlimited access to capital or investments, can provide their goods and services to consumers without limitations and operate their businesses however they want, the Chamber will support them. However, once a regulation looks to extend consumer or investor protection in a way that removes the laissez faire posture of regulators, the Chamber opposes those efforts through engagement in the legislative, regulatory or judicial processes. The Chamber frequently couches its concerns under the auspices of helping the small business community, but clearly most of the issues on which it engages have little or nothing to do with Main Street businesses.

This paper will also dig deep to identify the connections between the financial services industry and the Chamber to demonstrate the inherent conflicts of interest embedded in the organization, which purports to speak for small and medium-sized businesses as it lobbies and attempts to impact elected and appointed officials to change the financial regulatory structure.

SECTION 1

Part I. The Fix Agenda

CFPB "Fixes"

The first three "Fix" priorities for the Chamber relate to the newest financial regulator- the Consumer Financial Protection Bureau (CFPB). While the CFPB has been in operation for less than five years, its prominence in the Chambers' agenda cannot be overstated. The Chamber has consistently opposed the creation of a consumer financial regulator as part of financial regulatory reform.

As early as June 2009, more than a year prior to the enactment of Dodd-Frank, the Chamber announced its opposition to the creation of the CFPB. To put this in context, at a time when the U.S .unemployment rate was approximately 9.5% due in large part to the overhang of debt consumers suffered for now underwater mortgages, the Chamber teamed up with the nation's biggest banks to oppose the creation of a consumer financial regulator.

Soon thereafter, the Chamber announced plans for an aggressive campaign to oppose its creation, including $3 million in radio, TV and online ads. While its efforts ultimately failed (and the agency was created as a stand-alone, independently funded regulator), the Chamber continues to resist the CFPB's efforts to protection consumers in every arena—from its efforts to police tricky clauses in contracts that keep customers from suing for corporate wrongdoing to its attempts to improve auto finance regulations.

Fix Agenda Item #1- CFPB: Preserve Consumer Access

In order to accomplish this objective, the Chamber recommends four reforms[1]:

- Ensure the CFPB does not limit consumer choice and access to capital while still protecting and informing consumers.
- End regulation through enforcement.
- Preserve risk-based pricing.
- Ensure~~d~~ forced-arbitration clauses are preserved in consumer financial agreements.

[1] As in other parts of this report, the recommendations are not taken verbatim from the FAR Agenda.

Preserve Access to Capital

The first bullet appears clearly aimed at the CFPB's March 2015 Request for Information Regarding the Credit Card Market, Docket No. CFPB-2015-0007 and perhaps also at the CFPB's March 2015 outline of proposals under consideration relating to payday lending.

The Chamber submitted an official comment letter on the credit card proposal and cautioned the agency about overreach. Specifically, the Chamber highlighted points:

- The Bureau should maintain clear rules of the road in the credit card market.
- Rationing credit card credit will not protect consumers.
- The Bureau must be transparent to consumers and to Congress with respect to the information it gathers and publishes regarding credit cards.
- The Bureau should respect the clear limits on its authority regarding credit cards.
- The Bureau should recognize the authority and expertise of other agencies and avoid duplicative regulatory action.

While these points sound reasonable in the abstract, it seems clear that the Chamber is seeking light-touch or narrowly defined regulation, which is the type of regulation that led to the Great Recession. For example, a rules-based system, where there are explicit rules of the road, provides certainty about regulatory compliance. If company A does X, Y, Z, then it cannot be held liable for non-compliance. This puts a tremendous burden on the regulator to exactly define every potential regulatory requirement. Companies wishing to avoid regulation need only to find the loopholes not covered specifically by the regulation. In a principle-based system, a regulator identifies the outcome to achieve by the regulation and leaves it to companies to reverse engineer their compliance programs to achieve that outcome.

While the Chamber couches this as an issue for Main Street lenders, the fact remains, in the United States, seven mega-banks have 74% of the market share based on purchase volume.

With regard to the payday lender suite of proposals, the Chamber has issued no statements. Others, such as the Community Financial Services Association of American (CFSA), which represents payday lenders, have indicated that the payday lending proposals could have a negative impact on access to credit. Given the Chamber's support for unfettered access to credit, it is doubtful it would support the CFPB's regulatory outline.

End Regulation Through Enforcement

The Chamber's desire to end regulation through enforcement may be motivated by a series of enforcement actions against auto finance companies. For example, In the Matter of Ally Financial, the CFPB and Department of Justice (DOJ) determined that more than 235,000 minority borrowers paid high interest rates on auto loans because of discriminatory practice by Ally Financial and brought an enforcement action against the lender. Ally Financial and the agencies agreed to settle the case for nearly $100 million, including civil money penalties.[2] Subsequently, the Chamber called upon the CFPB to issue new regulations on auto financing., The CFPB later initiated a rulemaking in this area (and the Chamber submitted a comment letter ironically critical of the endeavor) and finalized the new auto finance regulations in June 2015.

Again, the Chamber contends this is an issue for Main Street businesses, but the majority of enforcement cases settled by the CFPB have been against large financial institutions.

Although the CFPB was responsive to the Chamber's request for rulemaking, it seems unlikely the Chamber is is pleased with the final rules.

Preserve Risk-Based Pricing

While the Chamber cites no examples of CFPB efforts to eliminate risk-based pricing for consumer credit, it has nevertheless taken the agency to task in an April 2015 blog by the Center's managing director. This may be in response to the enforcement action against American Honda, referenced above, in which the CFPB determined American Honda marked up its risk-based interest rate to thousands of minority borrowers.[3] The Chamber also references risk-based interest rate pricing in its comment letter on credit cards.

> More broadly, the Bureau should not take any steps that impair the use of risk-based pricing in the credit card market. Risk-based pricing has allowed enormous expansion of access to credit. Between the early 1980s and 2001, for example, the lower half of the income distribution experienced 200%–300% increases in the percentage of households with access to a general purpose credit card. Prudential regulators properly encouraged banks to use risk-based pricing as they expanded their customer bases. Limit risk-based pricing and this trend of improved access to credit will be reversed. Many customers would find themselves unable to secure credit, others would find themselves paying higher credit costs, and yet others would find themselves approved for more credit than they could safely handle. The Bureau should scrupulously avoid these outcomes.

Also, the Chamber released a report in October 2014 touting the benefits of risk-based pricing in consumer financial markets.

While it is difficult to argue everyone should be able to obtain credit on the same terms, risk-based pricing frequently is paired with the use of promotional or teaser rates, and the Chamber touts the "substantial benefits" of promotional rates or deferred interest by credit card companies. However, unfettered access to risk-based credit when accompanied by a teaser can lead some to overutilize their cards when interest rates are low and then see their rates skyrocket to risk-adjusted levels.

[2] See also, In the Matter of US Bank, NA, and In the Matter of American Honda Finance Corporation

[3] *Id.*

Once again, this an example where there is a disconnection between the Chamber's purported Main Street mission and reality, as the vast majority of credit card lenders are backed by mega-banks.

Preserve Forced Arbitration

The Chamber has also taken an anti-consumer stance on forced arbitration. In an April 2015 letter to CFTC Director Richard Cordray, the Chamber demanded a small business panel be convened prior to the issuance of any rule relating to forced arbitration (based on the "significant impact" and "substantial number" test and asked for a new standard on Small Business Regulatory Enforcement Fairness Act). The Chamber also argued the merits of forced arbitration and ignored the negative effects to consumers, claiming it will be more costly and difficult for small businesses to obtain credit without forced arbitration agreements.

Fix Agenda Item #2- Encourage Clarity, Modernization, and Transparency

- Create an advisory opinion and no action process
- Define the "abusive" standard and provide a policy statement to help enable compliance
- Limit data collection and enhance protection of data that is collected
- Prohibit the CFPB from publishing consumer complaints based on disputed facts

Advisory Opinion and No-Action Mechanism

The Chamber's call for a "fair and open advisory opinion and no-action process" is consistent with other federal regulators such as the Internal Revenue Service (private letter rulings) and Securities and Exchange Commission (no-action letters). So, one would be led to believe the Chamber would be pleased with an October 2014 notice by the CFPB that signaled the agency's intention to create a no-action mechanism.

However, the Chamber instead submitted a comment letter to the agency criticizing the proposal. First, it argues that rulemaking is the preferred method for regulating. Second, it complains that the proposal does not create both advisory opinion and no-action processes. Third, it contends the rule "would not facilitate legal compliance in a meaningful way" because it does not include an advisory opinion component and includes a list of exemptions for which no-action letters will not be considered.

While Chamber would called this another Main Street issue, the fact of the matter is few small businesses take advantage of advisory opinion or request no-action relief.

"Abusive" Standard and Guidance

This recommendation is closely related to the recommendation seeking to avoid rulemaking through enforcement. In the same letter referenced above in which the Chamber requested rulemaking on auto financing, the business association asserted that the term "abusive" was not defined by Dodd-Frank or CFPB regulations. Instead, the Chamber contended the agency was attempting to define the term to include negligent acts through the administrative settlement process.

While the Chamber is correct that the CFPB has not defined the term, Dodd-Frank has provided a definition. Section 1031(d) provides:

> ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—
>
> (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
>
> (2) takes unreasonable advantage of—
>
> (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
>
> (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
>
> (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Moreover, the CFPB provided a bulletin on unfair, deceptive and abusive acts or practices in 2013 which indicated they may depend on specific facts and circumstances. While the bulletin includes some examples of unfair, deceptive and abusive acts or practices, the agency also said it may be impossible to provide an exhaustive list of such violations.

Data Collection and Protection

It is unclear what prompted the Chamber's interest in the CFPB's data collection and protection programs. As the agency gathers and analyzes more information, perhaps the Chamber believes it is more likely its members will be investigated for potential violations of CFPB rules. However, it's clear from its 2013 letter to Director Cordray that the Chamber has strong views on the topic.

In 2014, the Government Accountability Office (GAO) studied the data collection and protection procedures by the CFPB and issued a report. The GAO study found the amount of information collected is consistent with other financial regulators and further found that the CFPB has taken steps to ensure its protection. The report went on to recommend several additional efforts the agency should take to safeguard data collected.

Prohibition on Publishing Consumer Complaints

The publication of what the Chamber calls "unverified" complaints by consumers has been a long-standing concern of the trade association. The Chamber first expressed its objections to the publication of complaints during proposed rulemaking by the CFPB in 2012. Subsequently, the Chamber submitted a letter in 2014 (relating to a Privacy Act rulemaking) and another letter in 2015 (relating to a request for information about the consumer complaint database).

The repeated argument by the Chamber in opposition to the complaint database is that it "will mislead consumers and permit manipulation of the database." The trade group also argued that it "disproportionately burdens small businesses and improperly forces companies outside the CFPB's jurisdiction to alter high-performing customer service practices."

Director Cordray has repeatedly defended the program to critics, but emphasizes complaints are not posted until the company has had a reasonable opportunity to respond. The CFPB has said the information helps empower consumers and has recently expanded the scope of the database to allow consumers to provide a narrative about the complaint.

Fix Agenda Item #3- Establish Checks and Balances

- Eliminate single director and replace with a commission.
- Require effective collaboration with other regulators.
- Subject the CFPB to the political appropriations process.
- Stop the CFPB from regulating interest rates in auto lending.

CFPB Leadership

The elimination of the single director of the CFPB and replacement with a commission or board has been another top priority for the Chamber since the agency came into being. The Chamber urged a restructuring of the agency before Director Cordray was confirmed by the Senate in 2013 and subsequently identified replacing the single director model in its 2013 FAR Agenda and 2014 FAR Agenda.

As agencies like the SEC and CFTC struggle to reach consensus on many important rulemaking projects, one might wonder why the Chamber seeks to replace a single director with a bi-partisan panel. But, the answer may be that the Chamber prefers an agency which is bogged down by ideological bickering rather that one with a single director with whom it frequently disagrees.

Collaboration with Other Regulators

Before the CFPB was created, the Chamber argued it would lead to burdensome and duplicative regulation and has subsequently called for greater coordination by the CFPB with other financial regulators. While coordination and consistency are laudable goals, the motives behind this recommendation raise concerns similar to those raised in the discussion about a single director versus a commission. The more individuals or groups of individuals who must agree on a rulemaking, the more difficult it will be to enact which is likely the point for the Chamber. If it cannot derail regulations by lobbying a CFPB board, then perhaps they can derail regulations by requiring consultation and agreement with an outside agency.

Appropriations Process

One of the unique aspects of the CFPB is its independent funding mechanism through the Federal Reserve Board, which collects fees for services it provides to depository institutions. Those wishing to rein in the agency, like the Chamber, would prefer the CFTC be subject to the annual, highly political appropriations process. This is the same process that resulted in a 16 day government shutdown in 2013. The power of the purse has long been a tool used by lawmakers to direct agencies to act in certain ways without having to pass substantive legislation. They will starve agencies they don't support or require they use funds for specific projects (i.e. IT infrastructure).

While agency oversight is important, Congress always has the power to change agency authority through legislation. There is great reason that the appropriations process, particularly in its currently dysfunctional state will be used to impose unpopular, industry-friendly changes on agencies that cannot be enacted through normal process

Auto Loan Interest Rates

This ultra-specific recommendation – to "stop the CFPB's unworkable attempt to set interest rates in auto lending" – is rather perplexing, but this should be an easy win for the Chamber. The CFPB has made no announcements concerning its intention to set interest rates for auto loans or any other consumer financial product. Moreover, the CFTC lacks the authority to determine interest rates. The agency does have the power to investigate unfair, deceptive and abusive practices that may involve interest rates, as discussed above.

It appears this item may simply be a hyperbolic response by the Chamber to the CFPB enforcement action against American Honda, referenced above.

Derivatives (or Swaps)

The next "fix" on the FAR Agenda relates to derivatives regulation. Prior to the enactment of Dodd-Frank, swaps transactions had been excluded from federal regulation. Following the enactment of the law, however, the SEC and CFTC were vested with the power to regulate swaps, including requiring that transactions be centrally cleared and imposing margin and leverage obligations.

The derivative reforms are another example of the disconnect between the Chamber's purported interest in small business versus its actual focus on large, global enterprises. For example, while there certainly are small businesses that transact in the commodity futures markets, it is highly unlikely mom and pop operators are affected by global swaps regulations.

Fix Agenda Item #4- Derivatives: Ensure End-Users are Able to Manage Financial Risks

- Extend end-user exemptions for clearing *and* margin requirements.
- Limit U.S. regulation to U.S.-based transactions.
- Harmonize U.S. swaps regulations with international rules.

End-User Exemptions

While the Chamber announced some early support for central clearing of standardized contracts in a letter to Congress in 2009, it also argued that swaps legislation should allow end-users (the user of the product) to continue to transact in tailored over-the-counter (OTC) swaps without clearing requirements.

Dodd-Frank included an end-user exemption from clearing for commercial end-users in order to hedge risk and allowed the SEC and CFTC to consider exclusions for smaller financial institutions. While the CFTC completed rulemaking on this matter in 2012, exempting end-users from mandatory clearing requirements, the Chamber and other business groups continue to push for a more liberal interpretation of the end-user requirements, including an exemption from margin requirements.

On January 12, 2015, President Obama signed the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIA Reauthorization), which included a provision that would exempt from margin requirements those end-users which are eligible to use the clearing exemption.

Though the TRIA Reauthorization was enacted two months before the FAR Agenda was released, it remains on the Chamber's list of priorities.

Limit Cross-Border Swaps Regulation

One of the key issues for the CFTC and SEC to decide as it implemented the new swaps regulatory scheme was whether it would limit its jurisdiction to transactions taking place in the United States or include all transactions involving U.S. firms regardless of where they take place.

The CFTC acted first and created a system that would allow for cross-border application of U.S. swaps regulations unless and until the CFTC determines a foreign regulatory system is comparable to that established by the CFTC. Although this is essentially what the Chamber requested in its 2012 letter to then CFTC Chair Gary Gensler, the Chamber continues to push for more narrowly defined definitions of the persons covered by extraterritorial rules and on "substituted compliance" with international regulators.

During the SEC rulemaking process on cross-border regulation, the Chamber submitted a comment letter asking the agency to develop different standards for swaps transactions entered into outside of the United States.

While the Chamber has purported to support swaps regulation, it clearly seems to support a light touch regulatory structure when it comes to swaps transactions taking place outside of the United States. In essence, the Chamber has argued for a system that would allow U.S. market participants to avoid U.S. regulations simply by engaging in transactions overseas, where there may be no comparable regulatory system. This could help lead to the type of unregulated assumption of risk by U.S. participants that ultimately lead to the Great Recession.

Harmonize Global Swaps Regulations

Similar to its efforts with restricting cross-border regulation of swaps and other efforts to require multiple U.S regulators to collaborate, the Chamber's calls for global harmonization should be taken with a grain of salt. On one side, the Chamber's concerns may be viewed as an effort to ensure there is a single, high-quality set of rules by which swaps are regulated. On another side, the Chamber's purported concerns may be seen as a delay tactic, whereby no rules should be embraced absent a global agreement. Most often, global harmonization leads a lowest common denominator approach to regulation, where the least controversial and least effective regulation is agreed to.

The Chamber has said little on this topic and it is difficult to gauge the significance of its concerns.

Systemic Risk

FAR Agenda fixes # 5-7 focus on systemic risk. To its credit, the Chamber supported the creation of a systemic risk council in a letter to lawmakers prior to the enactment of Dodd-Frank. However, the

Chamber opposed the idea of extending a banking regulatory framework to non-bank financial institutions, despite their prominent role in the Great Recession. The Chamber also opposed separating commercial and financial activities for non-bank financial institutions.

Fix Agenda Item #5- Financial Stability Oversight Council (FSOC) Opportunity: Coordinate Regulatory Efforts Dealing with Systemic Risk across the System

- Monitor and mitigate the cumulative impact of regulations across the entire system to ensure they foster capital formation and market efficiency.
- Identify and fill regulatory gaps.

Fix Agenda Item #6- FSOC Reform: Enhance Transparency and Communication through Structural Reforms

- Reform the FSOC structure so more views are represented.
- Require an economic analysis when the FSOC designates a "systemically important financial institution" (SIFI).
- Require 75% vote for FSOC actions.
- Eliminate conflicting and duplicative data requests.

Fix Agenda Item #7- Systemic Risk Regulation and Designation: Establish Due Process

- Systemic Risk Regulation and Designation: Establish Due Process.
- Establish jurisdiction over any non-bank designated a SIFI.
- Ensure regulation and orderly liquidation authority is tailored to a specific company.
- Create path for un-designation of SIFI status.
- Lower regulatory thresholds for mid-size and small banks.

The Chamber's desire for the FSOC to serve as an agency tasked with streamlining regulations in order to encourage capital formation and market efficiency completely ignores the mission of the organization. While capital formation and market efficiency are important, they should not be elevated above systemic risk mitigation, which the Chamber disregards.

The 2008 financial crisis was fostered by an environment in which capital formation was streamlined. However, market participants, particularly mortgage lenders and other financial institutions, paid only lip service to risk and investor/consumer protection.

According to the FSOC, its three primary purposes under Dodd-Frank are:

1. To identify risks to the U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace.
2. To promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the US government will shield them from losses in the event of failure.
3. To respond to emerging threats to the stability of the US financial system.

Given the Chamber's lack of understanding or appreciation for the role of the FSOC, it's not surprising that it has repeatedly chided the risk regulator. Almost immediately after the establishment of the FSOC, the Chamber began criticizing the agency. In 2011, it wrote a strongly worded letter concerning the FSOC proposed rules on the designation of Systemically Important Financial Institutions (SIFIs). Following the completion of the rule, the Chamber issued a press release bashing the new regulation. By 2013, the Chamber issued a FSOC Reform Agenda. In 2014, the Chamber held a press conference charging that the FSOC lacked transparency and due process. In January 2015, the restructuring of the FSOC made it into Chamber President Tom Donohue's State of American Business address and it submitted an amicus brief in support of Met Life's challenge to its SIFI designation.

Again, this is a big business issue being advanced by a big business group that likes to argue it represents small business interests.

Accounting Fixes

The last two fixes in the FAR Agenda relate to accounting and auditing issues. The Chamber has been active in both areas but was not critical of reforms involving the creation of the Public Company Accounting Oversight Board (PCAOB) or independent funding sources for the Financial Accounting Standards Board (FASB) established by Sarbanes-Oxley in 2002.

Fix Agenda Item #8- Accounting Convergence: Provide Accurate and Useful Information for Investors

- Ensure lease accounting reflects economic activity and provides useful information.

FASB and the International Accounting Standards Board (IASB) have been working to re-write and converge lease accounting rules since 2010 and the Chamber has been involved since the inception of the project. The Chamber was not supportive of the initial exposure draft by FASB and IASB, submitting a scathing letter to FASB and IASB in 2010 and continued its attack on the proposal through a report and press release in 2012.

In 2013, FASB and IASB issued a revised exposure draft. Still, the Chamber submitted another letter expressing its concerns about the proposal. It continues to object to certain aspects of the draft and has requested multiple roundtables, a cost-benefit analysis and robust field testing to support the cost-benefit analysis.

While no firm data was found, it seems unlikely that Main Street businesses are focused on this narrowly defined global accounting issue.

Fix Agenda Item #9- Public Company Accounting Oversight Board (PCAOB): End Regulation through Enforcement

- End regulation through enforcement.
- Establish and follow due process.
- Define "audit failure."

The Chamber's priorities in this area suggest a lack of understanding as to the operations and oversight of the Public Company Accounting Oversight Board.

The PCAOB has four principle responsibilities as it relates to auditors. It registers accounting firms that audit public companies and broker dealers; it conducts periodic examinations (called inspections) of each registered firm; it has the power to investigate and discipline registered accounting firms for violations of auditing standards or securities laws; and it establishes the auditing standards that must be followed by registered firms.

Since 2003, the PCAOB has issued and revised substantive and procedural rules in these areas. Moreover, each action of the PCAOB board is subject to approval by and/or appeal to the SEC. This includes determinations on registration applications, issuance of inspection reports, enforcement adjudications and adoption of auditing standards.

With regard to the Chamber's recommendation to define the term "audit failure," the agency does, in fact, provide an explanation. Auditing Standard (AS) No. 15, section 4 provides, "The auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion." The failure of an auditor to obtain sufficient appropriate audit evidence, by definition means that he or she does not have a reasonable basis for his or her opinion.

It is worth noting that the PCAOB regulates auditors of publicly traded companies, not the smaller, privately held businesses whose interests the Chamber claims to represent.

Part II. The Add Agenda

Regulatory Coordination and Consolidation

The first two "Add" priorities relate to regulatory coordination and consolidation, areas involving esoteric financial instruments of little to no interest to small businesses.

Add Agenda Item #1- Domestic Regulatory Coordination: Improve the Regulatory Process by Consolidating or Coordinating Regulators

- Ensure greater regulatory coordination involving capital requirements, derivatives and systemic risk.
- Consolidate SEC and CFTC.

Coordination

As described above, the Chamber included several coordination priorities in its "Fix" agenda. Notably this includes domestic derivatives regulation, cross-border derivatives regulation, global coordination of derivative regulation and FSOC domestic coordination of financial markets regulation. It is uncertain what additional reforms the Chamber desires to add in this area.

Consolidate SEC and CFTC

The idea of consolidating the SEC and CFTC has been around since the mid-1970s. More recently, President George W. Bush's Treasury Department issued a "Blueprint for a Modernized Financial Regulatory Structure" in March 2008 calling for a consolidation of business conduct regulators like the SEC and CFTC.

There was no serious discussion of consolidation during the debate leading up to the enactment of Dodd-Frank; however the issue resurfaced in 2012 following the proposed (and later consummated) purchase of NYSE Euronext (NYSE) by the Intercontinental Exchange (ICE). While the NYSE has a storied, century-long history as a marketplace for securities transactions, ICE was established in 2000 as a commodities and futures exchange. While ICE and NYSE continue to operate autonomously, and are regulated by the CFTC and SEC, respectively, ICE argued in support of regulatory consolidation following the completion of the deal in 2013.

The Chamber soon echoed this sentiment in its 2013 FAR Agenda and repeated it in its 2014 FAR Agenda.

Interestingly, many investor groups have similarly called for a merger of the agencies, (See, Investors' Working Group Report at p. 3), and support from big business may help overcome political hurdles. The primary obstacle to merging the agencies comes from a turf battle on Capitol Hill.

At present, the CFTC is overseen by the House and Senate Agriculture Committees, while the SEC is overseen by the House Financial Services and Senate Banking Committees. Were the two agencies to be merged, it is likely that the agriculture committee would lose jurisdiction over commodities regulation. The cachet and cash that comes with overseeing a financial markets regulator cannot be overstated. The CFTC regulates financial derivatives, such as interest rate swaps and foreign exchange swaps, and members can leverage their positions on the committees that oversee the CFTC for significant campaign contributions.

For example, among House Agriculture Committee Chairman Frank Lucas' top 20 campaign contributors from the last cycle are CME Group (a commodities and futures exchange), Credit Suisse, Depository Trust and Clearing Corp, Ernst & Young, JP Morgan Chase and Independent Community Bankers of America.

Few small businesses come into contact with these regulators, so it is highly unlikely this is an important issue for Main Street businesses.

Global Regulatory Activities

The next two Add agenda items relate to global financial regulations. The first agenda item in this area appears to embody several of the concepts addressed in the "Fix" agenda, including cross-border application of U.S. swaps regulations, global harmonization of swaps rules and convergence of FASB and IASB accounting standards. However, this recommendation broadly describes international coordination.

The second item is narrowly construed to encourage the establishment of a global market-based financing system, which refers to the largely unregulated system of banking commerce conducted by institutions that are not legally incorporated as banks. This is often known as the shadow banking system.

As we have seen with certain trade agreements and calls for global harmonization of other financial regulations, there is frequently a race to the bottom. While a single set of high level financial regulatory standards is a laudable goal, most often this leads to a compromised process by which only tepid reforms can be agreed upon.

Finally, as noted above, it seems unlikely small businesses would be transacting in the international financial markets.

Add Agenda Item #2- Global Regulatory Coordination: Ensure International Regulatory Efforts Are Workable Across Jurisdictions

- End extraterritorial application of U.S. regulations and create mechanisms for international coordination.

It appears the Chamber established the Global Risk and Governance Initiative (GRGI) earlier this year to address a number of issues relating to global financial regulation. According to a statement on the CCMC website, the GRGI seeks to engage on issues relating to: capital formation, risk management, corporate governance and other issues. The following is an outline of GRGI Issues:

Capital Formation

- Capital Standards (Basel)
- Money Market Fund Regulations (Shadow Banking)

Risk Management

- Regulation of Derivatives
- GSIFI

Corporate Governance

- Disclosures Overload
- Executive Compensation

Other Issues

- Market Structure
- Proxy Advisory Firms
- International Coordination
- Accounting and Auditing

To date, it appears that the GRGI has only engaged on one consultative document issued by the Financial Stability Board (FSB) and International Organization of Securities Commissions (IOSCO) on the designation of certain non-bank financial institutions as Global Systemically Important Financial Institutions (GSIFI). Not surprisingly, the Chamber did not support the document in a letter it sent to the FSB and IOSCO in May 2015.

Add Agenda Item #3- International Financial Markets: Develop Market-Based Financing

- Encourage the global development of market-based financing.

In May 2015, the Chamber issued a report entitled, "International Financial Markets: A Diverse System is the Key to Commerce," in which it discussed market-based financing. The report was written by Anjan Thakor, the John E Simon Professor of Finance and Director the Ph.D. program at the Olin School of Business at Washington University in St Louis. It explains the nature of market-based financing.

> It refers to institutions that act like banks in the sense that they engage in maturity transformation—investing in assets with maturities longer than those of the liabilities that fund them—but they are not supervised like banks. While "shadow banks" do not finance themselves with short-maturity deposits like commercial banks do, they nonetheless raise short-term debt in the financial market through repurchase agreements or "repos." Thus, broker-dealers who fund their assets using repos are "shadow banks." Similarly, money market mutual funds that pool investors' funds to purchase commercial paper or mortgage-backed securities, finance companies that sell commercial paper and extend credit to households and individuals are part of, the market-based financing system. Insurance companies, hedge funds, and investment banks are also part of market-based financing. (At p 58.)

Similarly, the FSB has written about market-based financing in a white paper release in November 2014. The FSB outlined its efforts to address the "fault lines" that contributed to the global financial crisis. It explained:

> The FSB has adopted a two-pronged strategy to deal with these fault lines. First, it has created a system-wide monitoring framework to track developments in the shadow banking system with a view to identifying the build-up of systemic risks and initiating corrective actions where necessary. Second, the FSB is coordinating and contributing to the development of policy measures in five areas where oversight and regulation needs to be strengthened to reduce excessive build-up of leverage, as well as maturity and liquidity mismatching in the system:
>
> (i) mitigating risks in banks' interactions with shadow banking entities;
> (ii) reducing the susceptibility of [money market funds] to "runs;"
> (iii) improving transparency and aligning incentives in securitization;
> (iv) dampening pro-cyclicality and other financial stability risks in securities financing transactions such as repos and securities lending; and
> (v) assessing and mitigating financial stability risks posed by other shadow banking entities and activities.

The FSB recently issued a Peer Review on Implementation of the FSB Policy Framework on Shadow Banking on implementation of the FSB policy framework on shadow banking. According to a supplemental Summarized Terms document, the framework contains three pillars:

(i) an assessment of non-bank financial entities based on five economic functions;
(ii) the adoption of appropriate policy tools from a menu of optional policies (policy toolkit) where necessary to mitigate financial stability risks; and

(iii) information-sharing among member authorities through the FSB process to maintain international consistency in applying the framework, minimize gaps in regulation and detect new shadow banking adaptations.

The Chamber submitted a comment letter in response to the peer review and expressed concerns about the FSB's three pillar approach, the FSB process and the framework in general.

Cost-Benefit Analysis Issues

The next Add request of the Chamber paper concerns cost-benefit analysis. The call for an exhaustive cost-benefit or other economic analysis by regulators as a component of rulemaking is a recurring argument throughout the comment letter or other statements by the Chamber. Al the independent financial regulators already have extensive economic analysis requirements. There is abundant evidence that traditional cost-benefit analysis is skewed to favor industry. On the one hand, regulated parties routinely overstate costs. On the other, benefits are systematically underestimated, including because non-monetary (shareholder democracy, for example) are not easily quantified and because cost-benefit analysis is not well equipped with calculating the benefit of reducing the likelihood of relatively low probability catastrophic scenarios (the 2008 financial crash, for example).

Add Agenda Item #4- Economic Analysis: Understand the Economic Impact of Regulation

- Require regulators to conduct a cost-benefit analysis two years after issuing a new/amended regulation.
- Require financial markets' regulators to conduct required economic analysis.
- Expand Unfunded Mandates Reform Act and require economic analysis by independent agencies.

Post-Implementation Cost-Benefit Analysis

Other than its inclusion in the 2013, 2014 and 2015 FAR Agendas, the recommendation for retrospective cost-benefit analyses does not appear in any Chamber study or report identified.

The Committee on Capital Markets Regulation, whose President is Harvard Professor Hal Scott, issued a report in 2013 that included a recommendation for Congress to require post-implementation cost-benefit analyses for certain regulations. It provided:

> Congress should require that agencies engage in the retrospective review of existing "major rules" at regular intervals. Such "look-backs" would include a substantive review of existing regulations and would incorporate analysis of whether a given regulation remains justified from a cost-benefit perspective. To relieve agencies of excessive burdens, such regulatory review should be instituted on a prospective basis only. (At p 18.)

In addition, legislation passed the House that would allow a relevant Congressional chair or ranking member to request a post-implementation cost-benefit analysis of a regulation. The legislation, known as the Unfunded Mandates Information and Transparency Act, was supported by the

Chamber in previous sessions of Congress (See Expansion of Unfunded Mandates Reform Act, below).

In an ideal world, this may be a prudent idea, but as a practical matter mandatory retrospective reviews are unworkable and contrary to effective regulation. Financial regulators, such as the SEC and CFTC, have finite resources, established through negotiated annual appropriations from Congress, and often are funded at levels lower than what they require.

Moreover, they regulators must operate in an environment where there is constant financial innovation and engineering. As such, these agencies primarily focus their efforts on evolving issues. Assuming these agencies continued to be underfunded; a reasonable assumption in the near term given the current anti-financial regulatory climate, requiring retrospective reviews of existing regulations would direct limited resources away from existing priorities.

Existing Cost-Benefit Analysis

The Chamber has a great deal of experience relating to insisting agencies conduct robust cost-benefit analyses on rulemaking with which it disagrees. In 2013 the Chamber commissioned a study by Professors Paul Rose and Christopher Walker at Ohio State University. It outlined the history, policy consideration and judicial review of cost-benefit analyses. The study highlighted several lawsuits brought or supported by the Chamber on the grounds that the cost-benefit analyses conducted were inadequate.

Clearly, the Chamber frequently engages with regulators during the rulemaking process and routinely highlights its emphasis on economic analysis. When it is displeased with the result, the Chamber often initiates or supports challenges to final rules before the US District Court for the District of Columbia or the DC Circuit Court of Appeals.

Expansion of Unfunded Mandates Reform Act

The federal government, through laws and regulations, sometimes imposes requirements—known as federal mandates—on state, local, and tribal governments and entities in the private sector to achieve national goals. In 1995, lawmakers enacted the Unfunded Mandates Reform Act (UMRA) in part to ensure that, during the legislative process, the Congress receives information about the potential effects of mandates as it considers proposed legislation.

Title II of UMRA requires federal administrative agencies, unless otherwise prohibited by law, to assess the effects on state and local governments and the private sector of proposed and final federal rules and to prepare a written statement of estimated costs and benefits for any mandate requiring an expenditure exceeding $100 million in any given year. All threshold amounts under these provisions are adjusted annually for inflation. In 2015, the threshold amounts are $77 million for intergovernmental mandates and $154 million for private sector mandates. Moreover, it would remove the exemption for independent agencies such as the SEC and CFTC, which already have obligations to conduct economic impact analyses prior to issuing final rules.

The Chamber has supported the expansion of UMRA since at least 2011 when it sent a letter to the House Oversight Committee in support of Unfunded Mandates Information and Transparency Act of 2011 (HR 373, 112th Cong). More recently, the Chamber sent another letter supporting the most recent version of the bill (HR 899, 113th Cong), which passed the House in February 2014.

The Unfunded Mandates Information and Transparency Act of 2015 (HR 50) passed the House in February of this year on a near party line vote.[4] Although the Senate has not considered this measure, it remains troubling that a majority in the House seek to undermine the independent agency rulemaking process by requiring additional economic analyses.

Bank and Insurance Regulation Topics

Global bank regulation is another high priority for the Chamber. It has offered numerous letters to U.S. and global policymakers on topics including capital requirements, leverage limits and liquidity standards. More recently, the Chamber has become interested in capital adequacy consideration relating to insurance companies. This should not come as a surprise to those who observe the Chamber has representatives of eight insurance companies on its board of directors.

As noted above, these are issues important only to global financial institutions, so to suggest small business owners are interested in these matters is highly questionable.

Add Agenda Item #5- Capital Standards: Harmonize Approaches to Capital and Leverage Requirements to Provide Stability and Growth

- U.S. and Global bank regulators should develop a harmonized approach to capital, leverage and liquidity requirements.
- Capital standards should balance stability with the need for growth. Ensure capital standards for insurance companies are developed in a deliberate fashion.

Harmonize Global Bank Regulations & Balanced Approach to Capital Standards

In 2013, the Chamber submitted a comment letter to the Bank for International Settlements (BIS) regarding a proposed rule on a bank leverage ratio framework. The Chamber expressed concerns about the proposal contending the rule "may dislocate the balance necessary for appropriate capital formation and prudent risk management by businesses, thereby harming economic growth and job creation."

The Chamber suggested BIS suspend consideration of the proposal until the European Central Bank could simplify Basel III, the latest global standard for bank capitalization. In January 2014, BIS finalized its rule on the leverage ratio framework.

The Chamber sent a similar letter to BIS concerning a consultative document on Net Stable Funding Ratio, which was finalized in October 2014.

[4] The bill also contained a provision that would place a $550 million cap on the 2016 budget of the CFPB, $36 million less than the amount the Congressional Budget Office estimated the agency would spend next year.

More recently, the Chamber has turned its attention to the implementation of the Basel III for small- and medium-sized US banks and credit unions. In February 2015, the Chamber sent a letter to the Senate Banking Committee in advance of a series of hearings on regulatory relief for community banks and credit unions. In its letter, the Chamber argued the application of certain regulations unfairly impacts small and mid-sized depository institutions and asked the committee to consider its views when crafting any regulatory relief legislation.

While Banking Committee Chairman Richard Shelby (R-AL) introduced marked up legislation entitled the "Financial Regulatory Improvement Act," he included controversial provisions beyond simple relief measures for small- and mid-sized banks. The bill contained a study on mortgage servicing assets and the impact of imposing Basel III and other capital standards on community banks' ability to provide mortgage loans and services.

Capital Standards for Insurance Companies

In September 2014, the Federal Reserve announced plans to conduct a quantitative impact study (QIS) to evaluate the potential effects of its regulatory capital framework on insurance holding companies under the Fed's supervision.

In March 2014, the Chamber tried to get out in front of this issue by posting an article by Nathaniel Wienecke with the Property Casualty Insurers Association of America. The piece argues that insurers are fundamentally different than banks and insurers should not have bank-like capital requirements thrust upon them. The article urges Congress "clarify through legislation that the Dodd-Frank Act provides the Federal Reserve with the authority to distinguish between banks and insurers and tailor capital requirements for insurers that it already regulates."

In addition, the Chamber has expressed concerns about the Consultation Document on Risk-based Global Insurance Capital Standard issued last winter by the International Association of Insurances Supervisors (IAIS). The Chamber letter indicated it believed the IAIS approach conflicted with certain FSB mandated projects and recommended the FSB and IAIS conduct a "cumulative impact analysis to understand the consequences of a diverse range of financial regulatory reforms before moving to complete work on an insurance capital standard."

SEC Overhaul Topics

Much of the bread-and-butter work by the Chamber in the area of financial regulation focuses on activities by the SEC. The trade association frequently comments on rule proposals, staff guidance, petitions for rulemaking and other requests for comments by the SEC. Prior to the enactment of Dodd-Frank, the Chamber seemed to focus on issues it likely thought would allow easier access to capital. Since the enactment of Dodd-Frank, the business group seems to be targeting ways to derail certain regulatory activities by the SEC, including watering down certain disclosures or discouraging enforcement actions.

Add Agenda Item #6- SEC Modernization: Create a World-Class 21st Century Securities Regulator

- Link increased funding to timely and clear progress on transformational reforms.

- Enhance enforcement programs to ensure fair examinations and investigations.

The Chamber has spent considerable time and effort on matters relating to SEC reform. In 2009, the Chamber engaged former SEC Secretary Jonathan Katz to develop a paper entitled, "Examining the Efficiency and Effectiveness of the U.S. Securities and Exchange." Katz participation in this project is particularly meaningful since he served as Secretary of the SEC for nearly 20 years, under 11 different chairs or acting chairs. This paper offered recommendations for reforms in four areas:

- Strengthening management structure and oversight;
- Improving the exemptive order process;
- Improving the self-regulatory agency rule filing process; and
- Improving the no-action letter process.

In 2011, the Chamber issued a follow up report entitled, "U.S. Securities and Exchange Commission: A Roadmap for Transformational Reform." This paper, also written with the assistance of Katz, expanded on the previous recommendations for structural and operational reforms, including increasing the number of commissioners from five to seven. It spent considerable time on recommendations for enforcement and rulemaking reforms. In sum, this report also provided recommendations for reforms in four areas:

- Transforming the SEC;
- SEC enforcement;
- SEC rulemaking; and
- SEC efficiency and effectiveness.

The paper also contained a critique on the SEC's limited implementation of the 2009 report and recommended the agency's budget be tied to greater implementation of transformative reforms.

In 2013, the Chamber pressed Congress on the SEC's budget. In a letter to the House Appropriations Committee, the Chamber echoed its previous recommendation that the SEC's budget be tied to implementing reforms. (A similar letter was sent to the Senate Appropriations Committee.)

Most recently, the Chambers published a paper in July 2015 entitled, "Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices." The report includes 27 recommendations for reform in three distinct areas:

- Enforcement policies;
- Commission oversight of the enforcement program; and
- Improving the efficiency and effectiveness of the investigation process.

Add Agenda Item #7- Disclosure Reform: Provide Investors with Clear and Useful Information

- Develop disclosure framework the addresses "information overload" but provides investors with meaningful information.
- Disclosure should be based on materiality.

The Chamber has been working to refine its message on corporate disclosures since at least 2013 when it included a recommendation to repeal certain disclosures required by Dodd-Frank in its

2013 FAR Agenda. As noted below, the Chamber's original approach (which it continues to advance in its "Replace" agenda) going back as far as 2010 was to attack various disclosure requirements, such as proposals on pay ratio, pay for performance, conflict minerals and resource extraction.

More recently, the Chamber has taken a parallel approach to disclosure in general. It held a roundtable on disclosure in 2014, which coincided with the issuance of a report on comprehensive corporate disclosure reform. The report can be broken up into two parts, near-term reforms and long-term reforms.

The near term reforms focus on specific issues within Reg S-K, which relates to required disclosures under the Securities Act of 1933 and the Securities Exchange Act of 1934. With respect to the nine specific recommendations below, the Chamber argued they are obsolete (and should be eliminated or updated), duplicative (and should be incorporated by reference to another disclosure document) or have thresholds that are too low. The recommendations relate to the following Items in Reg S-K:

- Items 201(a)(1)(i), (ii), (iii), and (iv)- Market and high/low share prices over the last two years. Chamber argument: Obsolete
- Item 201(c)- Frequency and amount of dividends over the last two years.
  Chamber argument: Obsolete
- Item 201(e)- Chart of stock performance over a period of time.
- Chamber argument: Obsolete
- Item 304- Disagreements with accountants.
  Chamber argument: Duplicative; Should be contained in Form 8-K
- Item 404(a)- Related party transactions.
  Chamber argument: Presumptively material threshold of $120,000 is too low; Should be scaled
- Item 503(d)- Ratio between earnings and fixed charges.
  Chamber argument: Obsolete
- Item 601- Exhibits
  Chamber argument: Obsolete
- Item 701- Recent sales of unregistered securities and a description of the use of the proceeds.
  Chamber argument: Duplicative; Already discussed in Management's Discussion and Analysis (MD&A)

The Chamber's long-term reforms include recommendations to:

- Update Compensation Discussion and Analysis (CD&A);
- Move to a principles based approach to MD&A;
- Eliminate repetitious statements within a filing;
- Revisit how companies disclose risk; and
- Rethink format of company reports and how they are delivered to investors.

It is unclear from the writing whether this is simply a laundry list of house cleaning projects or whether it's intended to limit or skew information to investors. It is worth noting, however, in 2012 the Chamber supported the JumpStart Our Business Startups (JOBS) Act, which contained a requirement that the SEC review and report on Reg S-K. Moreover, the SEC has recently undertaken a "disclosure effectiveness initiative" that is focusing on disclosures under Reg S-K and Reg S-X, which related to financial statements in public filings. This mandated retrospective review of regulation has the effect of shifting resources away from other investor-centric proposals, such as the disclosure of corporate political expenditures for which a petition for rulemaking has garner more than 1.2 million supportive comments, and helps demonstrate the undue influence the Chamber wields directly or indirectly.

Other Adds

The final three Add agenda items are a hodge-podge of other issues, including accounting and auditing oversight, regulation of proxy advisory firms and housing finance reform. Except for proxy advisory firms, the Chamber has said relatively little about these matters, so it is uncertain of their overall importance to the business community. With regard to proxy advisory firms, the Chamber's focus on this matter appears to be a frontal assault on the shareholder proposal process and an attempt to silence those who would disagree with corporate management.

Add Agenda Item #8- Financial Reporting: Further Improve Systems to Better Serve All Users of Financial Statements

- Require PCAOB and FASB to conduct cost-benefit analyses and follow other federal transparency rules
- Create financial reporting forum

Cost-benefit Analyses for Accounting and Auditing Regulators

Other than including this priority in the 2013, 2014 and 2015 FAR Agenda, the Chamber has not done much in this area. However, the trade group's calls for greater transparency are consistent with similar requests in other areas, and may be efforts to provide the Chamber and others a legal basis for challenging or delay unpopular rules or standards.

Financial Reporting Forum

Similarly, other than include this recommendation in the previous FAR Agendas and a statement to the PCAOB, the Chamber does not appear to have taken any action to advance it. The Chamber did request the PCAOB to create a business advisory group (which the audit regulator has declined to do), but no other information has been uncovered on this priority.

Add Agenda Item #9- Proxy Advisory Firms: Ensure Transparent, Evidence Based Standard Setting

- Regulate proxy advisory firms.
- Require proxy advisory firms to disclose potential conflicts of interest.
- Ensure proxy advice does not take a one size fits all approach.

Proxy advisory firms have been in the cross-hairs of the Chamber since at least 2010 when it sent a letter to the SEC, calling on the agency to regulate those firms. Since then, the Chamber has continued its drumbeat with additional letters, press releases, speeches, a best practice report and congressional testimony.

The Chamber claimed partial victory when the SEC issued a staff bulletin relating to proxy advisory firms and then the business association issued a Corporate Governance Update. The update provided a roadmap with three areas for public companies to focus on when dealing with proxy advisory firms.

> Communication with Proxy Advisory Firms: Public companies can serve their shareholders by maintaining a continuous dialogue with proxy advisory firms in order to correct erroneous or stale information, or to address any troublesome recommendations that do not advance the best interests of the shareholders.
>
> Dealing with Proxy Advisory Firm Conflicts of Interest: Public companies can take steps to verify proxy advisory firm conflicts identification and remediation, and bring any deficiencies to the attention of the advisory firm or, if necessary, the SEC.
>
> Communication with Institutional Investors: Public companies should continue to engage in year-round, regular communications with institutional investors, to develop and maintain a relationship of trust and confidence, and also provide public companies with an opportunity to bring concerns about the actions (or inaction) of proxy advisory firms to the attention of investors.

The Chamber continues to press the issue, holding a roundtable discussion in January 2015 and sending a letter to European regulators on the issue.

Add Agenda Item #10- Private Sector Housing Finance: Allow Private Sector to Return to the Housing Market

- Enact reform that would encourage private sector investment in the broader housing finance market

Presumably, this recommendation relates to reforming the US housing finance market and solving the issues around the conservatorship of Fannie Mae and Freddy Mac. However, the Chamber has been virtually silent on the issue of reforming the government sponsored enterprises (GSEs).

It was briefly discussed by Sen. Richard Shelby (R-AL) during the question and answer session following his keynote address at the annual Capital Markets Submit on March 25, 2015. But, it was not on the formal agenda and Sen. Shelby said GSE reform was unlikely in the near term.

Part III. The Replace Agenda

The final section of the FAR Agenda is limited to two areas where the Chamber has fought hard and is losing (or has lost). The first item relates to creating a fiduciary duty standard for those providing advice to consumers on investing for retirement. While the rule has not been finalized, there appears to be a good deal of momentum. With the time winding down on the Obama Administration, many observers believe there will be a push to complete the rules by year's end.

The other Replace agenda item relates to disclosure requirements enacted by Dodd-Frank. As indicated above, the Chamber has taken issue or legally challenged a number of SEC rules promulgated under Dodd-Frank. The issues identified in this priority fall squarely in that category.

Replace Agenda Item #1- Fiduciary Standard: Preserve Choice and Affordability for Retail Investment and Retirement Savings

- Ensure investors have freedom of choice in how they save for retirement
- Codify lower standard of care for broker-dealers
- Require SEC, DOL and FINRA to coordinate on rules relating to retirement savings
- Limit DOL rules to ERISA-based plans

Stopping or watering down the Department of Labor's (DOL) fiduciary duty/conflict of interest proposal may be the Chamber's top near-term financial regulatory priority.

DOL proposed its original rule in October 2010. In general terms, the proposal expanded the definition of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA). It proposed to impose fiduciary obligations on persons meeting covered relationship and activity criteria.

The Chambers strongly opposed the proposal in a letter to DOL. It identified 12 recommendations for amending the proposal:

- We Strongly Urge the DOL to Coordinate with the Securities and Exchange Commission.
- Removal of the "Regular Basis" and "Primary Basis" Requirements for Investment Advice May be Overly Broad.
- Making Appraisals and Fairness Opinions Investment Advice is an Expansion of the Statute.
- The Proposal May Unintentionally Harm Employee Stock Ownership Plans.
- The Recommendation to Take a Distribution Should be Considered Investment Advice.
- The Final Rule Should Continue to Preserve the Status of Investment Education Under Interpretive Bulletin 96-1.
- The Final Rule Should Clarify the Marketing Exception.
- The Final Rule Should Clarify that Advice about Investments May Not be "Investment Advice" Under the Statute.
- The Final Rule Should Clarify that Certain Employees of Plan Sponsors are Not Fiduciaries.
- Further Consideration Should be Given to the Application of the Rules to Broker-Dealers.
- Individual Retirement Accounts Should be Excluded From the Regulation At This Time.
- The Effective Date Should Be Extended to 12 Months Following the Date of Publication of the Final Rule.

In September 2011, DOL withdrew the proposal when it announced plans to re-propose the rule.

In October 2013, the Chamber sent a letter to Congress supporting the Retail Investor Protection Act which would delay the re-proposal by DOL until the SEC were to issue regulations relating to the obligations of broker-dealers. The Chamber went on to announce to lawmakers it would be using their votes on the bill and a related amendment in the Chamber's "How They Vote" scorecard. The bill was passed by the House in October 2013, but was not acted upon in the Senate.

In April 2015, DOL proposed a revised rule on conflicts of interest. According to DOL, the rule is intended to:

- Require more retirement investment advisers to put their client's best interest first, by expanding the types of retirement investment advice covered by fiduciary protections.
- Preserve access to retirement education.
- Distinguish "order-taking" as a non-fiduciary activity.
- Carve out sales pitches to plan fiduciaries with financial expertise.
- Lead to gains for retirement savers in excess of $40 billion over the next 10 years.

Following the re-issuance, the Chamber initiated an all-out assault on the proposal and announced it would use "every tool" in its arsenal to voice its concerns to the fiduciary duty rule.

It sent four comment letters (questioning the overall proposal, economic analysis and best interest contract exemption and identifying the impact on small businesses). It also organized a group letter to Members of Congress.

The Chamber summarized its opposition to the proposal as follows:

> On April 14, 2015, DOL issued a re-proposal of the fiduciary rule, relabeled the Conflicts of Interest rule that incorporates even more expansive changes than the original proposal. While the re-proposal includes all the sweeping changes as the original rule, it also wraps in distributions and rollover advice as a fiduciary activity, and narrows the carve outs and exclusions. The re-proposal includes Prohibited Transaction Exceptions (PTEs) that DOL uses to try to respond to the concerns, but PTEs are so extremely complex, rigid, written without a proper understanding of how the market works, that they are ultimately unworkable.

This is an active issue and it is expected the Chamber will remain active in contesting its concerns about the proposed rule.

Replace Agenda Item #2- Governance: Protect Investors from Special Interest Agendas

- Repeal corporate governance and executive compensation disclosures.
- Support reasonable disclosure.
- Give retail investors a voice in corporate governance.

Another hot button issue for the Chamber revolves around the empowerment of shareholders. Title IX of Dodd-Frank established a number of important investor self-help remedies, including provisions on proxy access, clawbacks and various disclosure requirements on executive compensation, insider hedging, conflict minerals, resource extraction and other issues. The Chamber has opposed most of these efforts, including suing the SEC (and prevailing) over several final rules (i.e. proxy access, conflict minerals and resource extraction) provided for in Dodd-Frank.

The Chamber also wrote a letter to the SEC objection to a petition for rulemaking relating to corporate disclosure of political expenditures.

Recently, the SEC finalized it rule on disclosure of the CE0-median worker pay ratio. The Chamber submitted a comment letter opposing the proposal and developed a white paper which may lay the foundation for another lawsuit against the SEC.

While the Chamber has included its recommendation on empowering retail investors in its 2013, 2014 and 2105 FAR Agenda, scant information can be found on the Chamber's efforts to advance this goal. The only reference to retail investors found in Chamber materials related to its attack on the SEC's proxy access rule.

SECTION 2
Chamber Ties to Wall Street and Political Contributions

The final section of this review will focus on the link between the Chamber and the financial services industry.

The Chamber has a board of directors with 118 members. Of those members, 17 have ties to the financial service industry. None of the Chamber's board members are associated with a depository institution. Three of the members work for asset management firms; six work for hedge funds or private equity firms; and eight work for insurance/reinsurance companies. The following is a graphical summary of political contributions made by each of the 17 board members with ties to the financial services industry during the 2013-2014 election cycle.

Political Contributions in 2013-2014 Election Cycle By Chamber Board Members Who Work in Financial Services Industry

Name	Employer	Political Contributions	Notes
John Bachmann	Edward Jones	$7,300	Individual contributions to Rep. Ann Wagner (R-MO) and Sen. Lindsey Graham (R-SC); Gave $5,000 to the ChamberPAC
Thomas D Bell Jr	Mesa Capital Partners	$80,900	All contributions to Republicans or conservative organizations, including $35,000 to the Southern Conservatives Fund
Adam Cooper	Citadel LLC	$28,800	Vast majority to Republicans with at least $3,300 to Democrats; Gave $5,000 to Managed Funds Assoc.
C A Howlett	Indigo Partners	$20,700	All contributions to Republicans, including $5,000 to the National Republican Study Committee; Gave $2,000 to the Chamber
David Jacobson	BMO Financial	$8,000	Gave $5,000 to Republicans, $3,000 to Democrats
Dayton H. Molendorp	OneAmerican Financial	$27,250	All contributions to Republicans, including $20,000 to the RNC and $2,000 to the NRSC
Brian O'Hara	Front Street Advisors	$5,000	Made a single $5,000 contribution to the Chamber
James M Power	CUNA Mutual	$240	Made a single $240 contribution to CUNA PAC
Randal K Quarles	Cynosure Investments	$38,000	All contributions to Republicans, including $32,400 to the NRSC
Chad Robinson	Clark Robinson Capital	$0	
John Ruan III	BTC Financial	$35,195	All contributions to Republicans; Gave $10,000 to the Chamber; Gave $6,745 to Ruan Companies PAC; Ruan Companies donated $42,300, 97% of which went to

Name	Employer	Political Contributions	Notes
			Republicans
Edward B Rust Jr	State Farm Mutual	$37,100	Gave $15,000 to other company PACs; Most contributions to Republicans.
Tracy G Schmidt	CNL Financial	$7,600	Two contributions: $5,000 to CNL Financial PAC; $2,600 to Rep. Daniel Webster (R-FL)
Donald J Shepard	AEGON	$75,100	All contributions to Republicans, including $25,000 to the RNC, $25,000 to the NRSC; Gave $5,000 to the Chamber; Gave $5,000 to CSX Corp PAC
Mark E Watson III	Argo Group Int'l	$12,400	All contributions to Republicans, including $7,400 to the NRCC
Thomas J Wilson	Allstate Insurance	$15,089	All contributions to Allstate PAC
Joan Woodward	The Travelers Co	$13,500	Gave $10,000 to Travelers PAC; $1,500 to Sen. Rob Portman (R-OH); $1,000 to Defend America PAC; and $1,000 to the Chamber
		$412,174	

www.opensecrets.org

In addition to these individual contributions by a subset of the Chamber's board, the ChamberPAC itself contributed $450,475 during the 2013-2014 election cycle, including $268,775 to 82 candidates. Of those 82 candidates, only one was a Democrat, Dan Maffei of New York, who lost his 2014 reelection.

More importantly, the Chamber spent more than $35 million from its treasury in the form of purportedly independent activities to influence elections during the 2013-2014 election cycle. This money primarily paid for advertisements. The expenditures it was required to report to the Federal Election Commission were divided between "express advocacy," in which its ads exhorted voters to support or oppose a candidate, and "electioneering communications," which are television and radio messages broadcast near an election that mention a candidate but do not expressly advocate his or her election or defeat. Such messages are sometimes known as "sham issue ads" because their effect is to influence voters' views of the candidates but they are exempt from certain rules that pertain to express advocacy expenditures.

The Chamber spent $21 million to influence 47 general election races, of which its preferred candidate won 36, according to Center for Responsible Politics. Of the funds expended, $1 million was spent to expressly oppose Republicans, $1.4 million was spent to oppose Democrats, $11.6 million was spent to support Republicans and $0 was spent to support Democrats. The balance of their political spending was used for "electioneering communications" which does not expressly advocate the election or defeat of a candidate, but refers to a candidate.

The Chamber invested substantially in eight 2014 U.S. Senate races. The following is a chart of the candidates they backed with independent expenditures in support of them or in opposition to their opponents. The chart also includes amounts spent by the candidate during the cycle.

Senate Candidate	Candidate Expenditures	Chamber Expenditures	Chamber Spending Expressed as a Percentage of Candidate's Spending [5]
Mitch McConnell (R-KY)[6]	$30,435,557	$1,569,620	5.2%
Jack Kingston (R-GA)[7]	$8,006,033	$2,343,379	29.3%
Dan Sullivan (R-AK)	$7,994,014	$1,325,684	16.6%
Thom Tillis (R-NC)	$10,955,926	$4,525,345	41.3%
Corey Gardner (R-CO)	$12,490,384	$3,273,974	26.2%
Joni Ernst (R-IA)	$12,418,374	$3,128,862	25.2%
Thad Cochran (R-MS)	$7,868,305	$1,200,000[8]	15.3%
Scott Brown (R-NH)	$9,163,652	$2,599,023	28.4%

Source:

When one looks at the substantial monetary boost the Chamber gave these candidates, it is plain the Chamber's spending gives it substantial political leverage.

To put the spending in context, look at the example of Sen. Thom Tillis (R-NC). As noted above, the Chamber's expenditures totaled 41.3% of the amount the Tillis campaign itself spent. By contrast, the combined total of all 571 political action committee (PAC) contributions was $1,616,561 or 14.8% of his campaign funds expended. In addition, the highest single donation totaled $126,300 or 1.2% of his fund.

The numbers are equally compelling for candidates in smaller House races. The Chamber spent more than $500,000 on 11 House races last cycle. The following chart once again shows the amounts the candidate and Chamber each spent on the 2014 election.

House Candidate	Candidate Expenditures	Chamber Expenditures	Percentage[9]
David Jolly (R-FL)	$1,810,874	$1,200,000	66.3%
Terri Lynn Land (R-MI)	$12,270,048	$500,000	4.1%
Doug Ose (R-CA)	$5,114,546	$600,806	11.7%
Robert Dold (R-IL)	$347,772	$950,000	273.2%
Dan Benishek (R-MI)	$2,158,322	$500,422	23.2%
David Valadao (R-CA)	$2,732,693	$550,000	20.1%
Stewart Mills (R-MN)	$2,087,731	$800,040	38.3%
Richard Tisei (R-MA)	$2,008,059	$700,212	34.9%
Chris Gibson (R-NY)	$2,981,041	$650,416	21.8%
Mike Coffman (R-CO)	$4,708,362	$750,766	15.9%
Martha McSally (R-AZ)	$731,868	$600,273	82.0%

5 The percentage of the Chamber's independent expenditures as a function of the candidate's own spending.

6 As a sitting Senator, this candidate's election cycle went from 2009 until 2014.

7 All fund expended during primary election, in which candidate lost.

8 All funds expended during primary election, in which candidate won.

9 The percentage of the Chamber's independent expenditures as a function of the candidate's own spending.

So, what has the Chamber received from Republican lawmakers in the current Congress so far? So far, quite a bit as identified below.

On January 13, the House passed the Regulatory Accountability Act of 2015 which would impose new cost-benefit requirements on government agencies. The bill was rejected by the vast majority of Democrats, many of whom saw it as an attempt to thwart government regulation. The Chamber urged passage of the bill in a letter to Congress. The President vowed to veto the bill. Not surprisingly the Chamber has endorsed a similar bill recently introduced in the Senate.

On January 14, the House passed the Promoting Job Creation and Reducing Small Business Burdens Act, which would revise derivatives rules, delay restrictions on collateralized loan obligations in the so-called Volcker Rule and ease SEC disclosure requirements. House Democratic Leader Nancy Pelosi (D-CA) called it a New Year's present to the big banks. The Chamber strongly supported the bill in a letter to Congress emphasizing to lawmakers it would be using their votes on the bill in the Chamber's "How They Vote" scorecard. To date, the Senate has not acted on this bill.

On February 4, the House passed the Unfunded Mandates Information and Transparency Act of 2015. This bill, described above, was strongly supported by the Chamber.

On February 5, the House passed the Small Business Regulatory Flexibility Improvements Act of 2015, which would require regulatory agencies to provide a separate economic analysis regarding the potential impact proposed regulations would have on small businesses. The Chamber organized a sign-on letter supporting the measure. The bill was opposed by 160 Democrats and no Republicans. The Senate has not acted on this bill.

On April 14, the House passed two bills that would undermine important consumer protections in the mortgage market. The Preserving Access to Manufactured Housing Act of 2015 would eliminate protections established by Congress and implemented by the CFPB regarding mortgages for manufactured homes. The Mortgage Choice Act of 2015 would create a loophole for mortgage fees, allowing loan originators to avoid certain underwriting requirements. The Senate has held hearings on the Mortgage Choice bill, but taken no other action. President Obama has vowed to veto both bills.

On April 22, the House passed the Bureau of Consumer Financial Protection Advisory Boards Act which would require the CFPB to create a small business advisory group. The bill would also severely limit the CFPB budget. According to estimates, it would limit the amount the CFPB could request from the Fed over the next two years, cut the agency's budget by $45 million over five years, and cut it by $100 over 10. Predictably, the Chamber supported the bill in a letter sent to the House Financial Services Committee. The Senate has taken no action on the bill and the President has threatened to veto it.

On June 9, the House passed the Commodity End User Relief Act which would impose duplicative and burdensome cost-benefit requirements on the CFTC. It would also undermine the CFTC's efforts to implement the end-user and cross-border provisions in Dodd-Frank. The Chamber strongly supported the bill in a letter to Congress again emphasizing to lawmakers it would be using their votes on the bill in the Chamber's "How They Vote" scorecard. The President has issued a statement opposing the bill.

There are a number of bills still working their way through the committees of jurisdiction, so the Chamber can be expected to support several additional deregulatory bills later this session of Congress.

Closing Thoughts

The Chamber is clearly committed to light-touch regulation of the financial markets. By trying to frustrate regulators with whom they differ through communications strategies, challenging regulations in federal court, or supporting politicians who will advance its agenda, the Chamber is willing to do what it takes to get its way.

Where two decades ago the Chamber might have sought to work with politicians on both sides of the aisle and compromise when necessary, current leadership appears only willing to support (financially and politically) Republican candidates who favor a deregulatory posture and for whom compromise is clearly unacceptable.