



CENTER FOR CAPITAL MARKETS  
COMPETITIVENESS

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May 1, 2017

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

The U.S. Chamber of Commerce supports H.R. 10, the “Financial CHOICE Act of 2017.” The Chamber believes the Financial CHOICE Act is an essential first step towards unlocking our capital markets and facilitating the financing of economic growth and job creation.

The Chamber supports efforts to reform the regulatory rule-writing procedures of the federal banking regulators through increased transparency and accountability. Indeed, we were pleased to see many of our suggestions as put forth in [Federal Reserve Reform: Securing Transparency and Accountability](#), included in the Financial CHOICE Act. Nevertheless, the Chamber strongly opposes the inclusion of any requirements that infringe upon the independent monetary powers of the Federal Reserve, specifically provisions that impose new procedures beyond the normal audit for financial statement and reporting purposes, and any rules that impede the independence and impartiality of the Federal Open Market Committee. Such provisions risk politicizing monetary policy decisions and could destabilize the financial system. We strongly urge the removal of these provisions and reserve our continued support of the Financial CHOICE Act as it moves through the legislative process.

The legislative and regulatory response to the financial crisis, while well-intentioned, attempted to wring reasonable risk-taking out of the financial system in the name of stability. While stability is a laudable and essential goal, true prosperity requires stability *and* growth. As a consequence of conflicting and competing rules and requirements, our capital markets have become more inefficient and illiquid as well as less stable, making it difficult for America’s job creators to access the financial resources they need to expand and create jobs. Main Street businesses, who are the drivers of economic expansion, have been cut off from the capital needed to grow. As a result, the U.S. economy has underperformed over the last 8 years, growing by historically anemic rates of two percent or less. Consideration of the Financial CHOICE Act is the first step of doing away with this “new normal” and restoring economic growth to traditional rates of three to four percent.

In September of last year, the Chamber released a report entitled [\*Restarting the Growth Engine: A Plan to Reform America's Capital Markets\*](#), which has over 100 recommendations for creating a regulatory system that embraces stability and growth. The Chamber recognizes and appreciates the incorporation of many of these recommendations into the revised Financial CHOICE Act.

The Chamber believes the Financial CHOICE Act is an essential first step towards unlocking our capital markets and facilitating the financing of economic growth and job creation. Specifically, we are pleased to see the following provisions in the Financial CHOICE Act:

### **Ending “Too Big to Fail” and Bank Bailouts**

- Changes to the Bankruptcy Code that are designed to facilitate the resolution of large and complex financial institutions, particularly non-bank financial firms.
- Modifications to the structure and authority of the Financial Stability Oversight Council (“FSOC”), as well as transparency reforms. The U.S. district court’s decision in *MetLife vs. Financial Stability Oversight Council* confirmed that FSOC’s Systemically Important Financial Institution (“SIFI”) designation process is arbitrary, inconsistent, and contrary to core regulatory principles.

### **Accountability from Regulators**

- Requirements that federal financial regulators rigorously analyze the impacts of potential rules and regulations, and conduct a “retrospective review” every five years. Unfortunately, financial regulators—in particular the Federal Reserve and Bureau of Consumer Financial Protection (“Bureau”)—have failed to conduct a meaningful economic analysis for most post-crisis rulemakings. A retrospective review will help regulators understand a given regulation’s real-world impact on economic growth and job creation.
- The establishment of a “Chief Economists Council,” consisting of the chief economists of each federal financial regulator. The Chamber strongly supports the Council’s charge to study the cumulative impact of major financial regulatory initiatives implemented since the financial crisis. This study is necessary to understand these regulations’ collective impact upon capital formation and economic growth.
- Provisions allowing Congress to disapprove “major” rules issued by federal financial regulators. Providing Congress with greater opportunities to exercise its authority under Article I of the United States Constitution will help ensure that regulators remain accountable to the public and that they do not take up a role as quasi-legislators.
- Provisions that bring federal financial regulators into the regular appropriations process. The appropriations process, a cornerstone of our constitutional structure, is integral to congressional oversight and regulatory accountability.

- Standardization of processes and procedures for U.S. participation in international standard-setting bodies, including the Financial Stability Board (“FSB”), the Basel Committee on Banking Supervision, and the International Association of Insurance Supervisors.
- A requirement that federal agencies establish policies and procedures to minimize duplicative enforcement efforts, establish standards for when joint investigations or enforcement actions are appropriate, and appoint a lead agency to coordinate any joint efforts. These policies will reduce unnecessary and inappropriate burdens on stakeholders, while fully preserving the government’s ability to prosecute wrongdoing.

### **Facilitating Capital Formation**

- Incorporation of key capital formation bills passed by the Committee and the House. The Chamber is greatly concerned by the continuing 20-year decline in the number of public companies in the United States, and the difficulties faced by entrepreneurs in starting new businesses. These bills will promote capital formation by expanding the investor community, focusing on small businesses and startups, and leveraging new technologies to unleash Main Street growth and economic opportunity.
- Modernization of the regulatory regime for business development companies (“BDCs”). These reforms will improve BDCs’ ability to provide capital to small and middle-market businesses.
- Provisions requiring proxy advisory firms to register with the Securities and Exchange Commission (“SEC”). Registration will provide greater accountability and subject such firms to an appropriate oversight regime.

### **Main Street Relief**

- Repeal of section 1071 of the Dodd-Frank Act. While well-intentioned, this immense data collection exercise imposes an extraordinary burden on financial institutions. Unintended consequences include constrained credit to our nation’s small businesses and detrimental impacts to the economy.

### **Relief for Well Capitalized Banking Organizations**

- Recognition that the capital and liquidity requirements imposed by the Dodd-Frank Act, Basel III, and various implementing regulations have created a severe drag on the U.S. economy. However, we believe that relief eligibility for bank holding companies should not be based on a leverage ratio or a similar computation.

### **CFPB Reform**

- Significant reforms to the Bureau, now named the Consumer Law Enforcement Agency (“CLEA”) in the Financial CHOICE Act, such as putting CLEA under regular congressional appropriations, which is a vital “check” in our system of checks and balances.
- Eliminating the Bureau’s authority over unfair, deceptive, and abusive acts and practices and returning sole authority to the federal banking regulators. These regulators have established track records on what constitutes a violation, providing institutions with certainty as to prohibited practices. In contrast, the Bureau’s enforcement has been arbitrary and inconsistent, and has duplicated actions already brought by the appropriate banking regulator.
- Repeal of Bureau’s authority to regulate small-dollar credit. According to the Federal Reserve, “forty-six percent of adults say they either could not cover an emergency expense costing \$400, or would cover it by selling something or borrowing money.” Many Americans rely on short term liquidity to meet their emergency—and sometimes daily—financial needs. The Bureau’s proposed small dollar rule will substantially hamper consumers’ ability to access credit and engender harmful unintended consequences.
- Provisions to strengthen consumer financial privacy protections, and to align the treatment of complaints received by the Bureau with the treatment of complaints received by other federal agencies, including the prudential banking regulators and the Federal Trade Commission.
- Repeal of the Bureau’s authority to restrict the use of arbitration. The Bureau itself acknowledged in its own study that arbitration is cheaper, faster, and yields larger settlements for consumers than class action litigation.

### **Capital Markets Improvements**

- Modernization of shareholder proposal rules under Rule 14a-8 of the Securities Exchange Act. A small subset of special interest activists has corrupted the shareholder proposal system under 14a-8, forcing the vast majority of public company investors to pay for issue campaigns that have nothing to do with enhancing shareholder value. The SEC’s long neglect of retail shareholders has ultimately harmed those who invest in the public markets, and the Chamber has long called on the SEC to enhance the participation of investors in the proxy process. We believe that reforms to Rule 14a-8 are an importance piece of such reforms, as are solutions such as client-directed voting and simplifying proxy disclosures.
- Managerial and structural reforms to the SEC that will improve agency operations and promote transparency.

- Provisions requiring the SEC to publish an annual enforcement manual. This document will provide the public with greater information regarding enforcement actions and promote compliance with laws and regulations.
- Critical due process protections for respondents in SEC enforcement proceedings, in particular the right for respondents to have their case removed to federal district court.
- A prohibition on the SEC implementing a rulemaking that would mandate the use of universal ballots during proxy contests.
- Streamlined procedures for the SEC to approve applications for investment products. Currently, many applicants are left in limbo for months or even years while waiting to launch new products.
- Denial of whistleblower awards to those individuals who are complicit in wrongdoing.
- Repeal of the Department of Labor’s (“DOL”) fiduciary rule, the stay on any new DOL fiduciary rule until after the SEC issues a rule, and the requirement that any new DOL fiduciary rule have a substantially identical definition of investment advice and the standard of care. Such provisions will help eliminate confusion among investors while ensuring they have access to financial advice and choice.

### **Repeal of Volcker Rule**

- Repeal of the Volcker Rule, as it has created unjustifiable impediments for non-financial businesses to enter the debt and equity markets. This overly burdensome and exceptionally complex rule has placed U.S. market participants at a global competitive disadvantage.

### **Federal Insurance Office Reform and Covered Agreements**

- Provisions designed to ensure that the interests of U.S. insurers are appropriately and fully represented in international negotiations and before the FSOC. However, such provisions must give due consideration to our long-standing and effective system of state-based insurance regulation.

In short, the Chamber strongly supports many provisions of the Financial CHOICE Act of 2017, and commends the Committee and its Members for the development of a thoughtful and measured approach to financial regulation. However, we believe the *Restarting the Growth Engine Plan* offers additional, common-sense policies that will well-serve the Committee in its continued deliberations. Among those suggestions are:

- Establish a Presidential Commission (the “Commission”) on Financial Regulatory Restructuring. The Commission should be truly bipartisan and work toward formulating a plan for restructuring the financial regulatory system to create the oversight needed for 21st century capital markets. The Commission should demonstrate how the new

financial regulatory structure will meet the policy goals such as safety and soundness of the financial system and achieve balanced policies for encouraging competition and growth.

- The U.S. representative to the FSB should be a presidential appointee, subject to the advice and consent of the Senate. U.S. regulators have used the FSB to drive domestic regulation. Regulators should not treat standards promulgated by FSB as legally binding on the United States without explicit congressional authorization to do so. Given the central role of the United States in the FSB, and the organization's reach, it is proper that the Senate be able to review the credentials of our representative, and get necessary and appropriate commitments regarding his or her service at the FSB.
- Standards governing the treatment and conduct of U.S. representatives to the FSB with respect to the designation of Global Systemically Important Financial Institutions.
- Elimination of the repeal of funding for the Governmental Accounting Standard Board ("GASB"). Providing an independent source of funding for GASB is critical to ensuring that GASB's standards for governmental entities and public pensions are not influenced by outside actors.

Once again, the Chamber strongly opposes any provisions that impact independent monetary policy, particularly those that impede the independence and impartiality of the Federal Open Market Committee. The Chamber further believes that any changes to the Federal Reserve's non-regulatory functions should be considered separate and apart from this legislation and therefore urges the Committee's separate consideration of Title X.

Stability and growth are the twin pillars of prosperity. The legislative and regulatory response to the financial crisis, while well-meaning, sacrificed the latter in the name of the former. The judicious and sensible reforms embodied in the Financial CHOICE Act will promote capital formation, provide consumer choice and opportunity, and allow for the *reasonable* risk-taking necessary to economic growth and job creation.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman

cc: House Financial Services Committee