



FINANCIAL
SERVICES
ROUNDTABLE

April 14, 2017

The Honorable Michael D. Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

Thank you for your recent request to share information about proposals that the Committee on Banking, Housing & Urban Affairs could consider to spur economic growth. We welcome the opportunity to respond and commend you for focusing on this issue.

As you know, the Financial Services Roundtable (FSR) represents about 100 of the 150 largest U.S. financial institutions. Our members engage in lending and leasing, investment management, insurance and payments facilitation. FSR member companies engage with us at the CEO level and through other C-suite executives. All of our members are focused on economic growth and strongly encourage our government, at all levels, to focus their energies there, as broadly-distributed strong economic growth will address fundamental issues in our economy and the nation as a whole.

This submission is meant to encourage the conversation, but is by no means the full range of our priorities. For example, we strongly support efforts to enact a simpler, pro-growth, pro-retirement tax reform that lowers rates but does not unfairly target our industry for payfors, but that issue will be handled in another Committee.

The first issue we would like to raise is regulatory tailoring. FSR supports a regulatory system tailored effectively to bolster the financial services sector's ability to serve consumers, grow the economy and create jobs. Regulatory tailoring should reflect the unique business operations, risk and capital profile of diverse financial services providers in the insurance, banking, finance and payment sectors. This regime should lower unnecessary and complex regulatory burdens that take money out of the economy and raise barriers to competition.

Targeted regulatory approaches should not be based on arbitrary thresholds, but rather on holistic measures of enterprise risk. Doing so removes unnecessary regulatory requirements that misdirect government and private sector resources in ways that constrain lending, job creation and economic growth. Institutions that are subject to enhanced regulation based on an arbitrary threshold that does not reflect their enterprise

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or systemic risk devote countless resources to complying with regulations that should not reasonably apply to them. This takes capital away from small business loans, home purchases and other productive uses. Every dollar spent on hiring compliance attorneys is potentially \$10 dollars of loans that could be made to improve someone's economic opportunity.

For institutions legitimately determined to be subject to enhanced prudential standards, our regulatory system should reflect appropriate reforms that simplify and bring greater transparency and predictability to stress testing requirements, the Comprehensive Capital Analysis Review (CCAR) process and the review of annual resolution plans. By increasing clarity we will better enable institutions to meet desired regulatory requirements, bolstering their own risk management, further protecting the financial system and, most importantly, taxpayers. Further, greater clarity means institutions can deploy more of their scarce resources into productive economic activity.

For institutions that are appropriately deemed subject to enhanced standards, an effective road map to meet those standards should be provided. Doing so will achieve regulatory objectives and create efficiencies that will facilitate greater investment in the U.S. economy and more economic growth. The Dodd-Frank Act established the CCAR, stress testing and resolution planning processes to ensure companies have sufficient capital to operate through adverse financial and economic environments, and, if necessary, have a plan for resolution. The processes, however, lack transparency. Regulators should provide covered institutions clear expectations and timely, meaningful feedback to bolster the utility of each exercise. Resolution plans, commonly known as "Living Wills," detail a covered company's plan for orderly resolution in the event of failure. The planning, however, is too frequent, lacks effective coordination between the FDIC and Federal Reserve and remains opaque.

Banks over \$50 billion in assets are automatically designated for increased prudential regulation. This is an arbitrary number and should be eliminated in favor of an assessment of activities and systemic risk¹. CCAR review of designated institutions, which are also now subject to annual stress testing, should occur biennially.

The Committee should also consider legislative changes to Title VII of the Dodd-Frank Act to better tailor derivatives to the business of financial services. First, CFTC reporting on swaps trading should not be publicly disseminated on a real time basis, but instead should be reported on a delayed basis. While the information generated by the CFTC's real-time reporting requirements for swaps activity is useful to regulators to monitor the markets, the large amounts of data that are being publicly disseminated hurt the ability of end-users to execute trades in the most cost-efficient manner by compromising anonymity. Second, initial margining rules should be amended to ensure the initial margins are appropriately calibrated to the risk associated with the trading activity and credit quality

¹ See, e.g., Aite Group, Bank Size vs. Systemic Importance, Oct. 30, 2015, <http://fsroundtable.org/study-financial-institution-size-alone-incomplete-measure-economic-risk/>.

of said trader. Although variation margins are an important risk management tool, initial margins can be an excessive burden on market participants, sometimes outweighing the nature and risk of the trades implicated, which can unnecessarily reduce market liquidity.

The next issue we would like to raise is the Financial Stability Oversight Council's (FSOC) charge to assess potential threats to U.S. financial stability. Put simply, designating nonbank financial companies for supervision by the Federal Reserve Board has not worked. FSOC has unfairly designated companies as "systemically important" under a fundamentally flawed process and with a lack of compelling evidence. The designation process has failed to adequately consider the role of primary financial regulators, resulting in duplicative supervision and regulation, increased regulatory costs and burdens and an un-level playing field. Designations are impacting economic growth by discouraging investments and product and service offerings.

While the nonbank designation process was intended to address potential systemic risks posed by nonbanking companies and prevent taxpayer-funded bailouts, designations are perceived to have just the opposite effect, creating a category of firms deemed to be too-big-to-fail. The standards and procedures surrounding designation also have been subject to critical assessments by Congress and the GAO².

Given these problems, we recommend that FSOC's statutory authority for designating nonbank financial companies be repealed. This change would continue to grant FSOC authority to address systemic risks posed by nonbank financial companies, primarily through Section 120 of the Dodd-Frank Act, which permits FSOC to identify particular activities or practices that may pose significant financial stability risk and recommend that relevant regulators adopt new or heightened standards to address such risks.

Pending the repeal of the designation authority, we recommend you require FSOC to:

- allow a company to review all information considered by FSOC;
- require FSOC to provide specific reasons why a company is being considered for designation or is ultimately designated;
- permit a company to review, correct and comment on all documents created by FSOC about the company prior to such information being presented to FSOC principals;
- require meaningful participation by a company's primary regulatory in designation consideration, including explicit ability of the primary regulator to certify that existing regulations adequately address potential threats identified by FSOC;
- permit a regulatory appeal process that includes independent assessment of the designation (i.e., appeal should not be made to the same people who designated the company); and

² See, e.g., House Financial Services Committee, Republican Staff Report, The Arbitrary and Inconsistent FSOC Nonbank Designation Process, Feb. 28, 2017, https://financialservices.house.gov/uploadedfiles/2017-2-28_final_fsoc_report.pdf; Government Accountability Office, Financial Stability Oversight Council: Further Action Could Improve the Nonbank Designation Process, Nov. 2014, <http://www.gao.gov/products/GAO-15-51>.

- provide for a clear off-ramp process subject to the same transparency and right of participation rules, which would include allowing the designated firm to develop and submit a risk mitigation plan to the FSOC in order to exit the designation.

The Committee should also consider granting the SEC the authority to directly regulate the disclosure requirements for state and local governments that issue municipal securities, which generally are held by retail customers. Right now, the SEC prescribes disclosures indirectly, through broker-dealers that act as municipal securities underwriters. It would be more efficient and better for retail investors if the SEC “removed the middle man” and directly regulated these disclosures. This is particularly timely given the need to finance state and local infrastructure projects that yield jobs and economic development.

The Committee also has significant jurisdiction over infrastructure spending, particularly mass transit spending. The “wishlist” for new infrastructure investments will far outstrip the government’s ability to finance them. We urge you to work with FSR members and other companies in the global financial markets to explore new and innovative financing options that can harness the liquidity currently existing in the global system and deploying it to economically viable infrastructure projects. We want to partner with you on new ideas to expand our ability to fund projects, particularly those where there can be long-term returns on large up-front investments.

Another thing the Committee can do to improve economic growth is to offer certainty to the market so that savers and investors can better understand the rules of the investing road. All of us have been engaged for several years in an exhausting fight over the Labor Department of Labor’s fiduciary rule. Fundamentally, this is the result of a lack of clarity from Congress on what the regulators should and should not do. The result has been years of regulatory uncertainty, preventing meaningful new investments in new products and services. We believe that there should be a best-interest standard applied to all retail security and annuity products, established in securities and insurance law. Congress should pass legislation to establish what comprises that best interest standard and provide statutory exemptions for transactions that conform to the new standard (including exemptions for a comparable best interest standard adopted by state insurance authorities for annuities), and not just leave it to a revolving door of regulatory interpretations. After years of uncertainty, it is time for Congress to provide certainty.

Next, the Committee can help protect our financial system by exercising increased oversight over federal, state and even local agencies passing overlapping and conflicting cybersecurity rules. We strongly support rigorous cybersecurity standards, and the Framework promulgated by the National Institute for Standards and Technology (the NIST Framework) is the standard toward which most believe we should work. However, agencies across the board, asserting their unique authority over a particular industry or piece of a company, are implementing their own unique regulatory standards on companies. Often this takes the shape of new reporting requirements and other times there are slight gradations and “gold plating” of the standards. The result is that

companies are pulling people off of productive cybersecurity efforts and deploying them to keep up with their regulatory obligations. While satisfying the many different regulators we are actually making the system less safe and secure. We can use your help to get the regulators to harmonize the dozens of regulatory proposals from multiple agencies at all levels of government and avoid overlapping and sometimes contradictory regulatory efforts. We are currently developing a template that, if adopted by the regulatory community, will advance cybersecurity and address each of the regulatory agencies' oversight authorities and risk concerns, while reducing non-security-additive compliance burdens.

In the payments space, federal government price controls on debit interchange rates is having an impact on, among other things, investments in security. Rather than saving customers money on their debit-card transactions, these price controls have resulted in the loss of some product offerings and have the potential to stifle innovation in the dynamic payments market. Put simply, in a modern economy government should not be in the business of setting prices between consenting economic parties. This law has the government picking winners and losers, at the expense of economic efficiency. Repealing federal government price controls on debit interchange rates will result in multiple benefits for the economy.

Another way the Committee can help protect the economy from a devastating event would be through reform of the housing finance system. We strongly believe that fixing our broken housing finance system will improve economic growth. Through the Housing and Economic Recovery Act of 2008, taxpayers covered \$187 billion dollars in losses from Fannie Mae and Freddie Mac (the Government Sponsored Enterprises, or GSEs), and the GSEs were placed into conservatorship. However, because of that bailout, the U.S. taxpayer is on the hook for virtually every mortgage made in America today. A transition from government conservatorship to a system that features more private capital is long overdue. The transition should preserve access to the popular 30-year fixed-rate mortgage, maintain liquidity in the multifamily market and protect taxpayers from losses.

Helping potential homeowners achieve their dreams will be far more effective if we have a more efficient Consumer Financial Protection Bureau (CFPB). Consumers should have the best information to make informed financial decisions that help enhance personal economic success, which will promote overall economic growth. They should also be protected from unfair practices, while having access to products and services they want and need. CFPB has promulgated policies that have impaired consumer access to and choice of important products and services and has improperly extended the agency's reach beyond Congressional intentions. The primary approach the CFPB has taken since its establishment has been to supervise the industry through enforcement, stifling the ability to provide personalized financial products and services that consumers demand. To address this, the CFPB should be reformed in ways that will bring effective oversight, transparency and accountability. This will allow for an increase in responsible innovative financial products that enhance consumer choice and access to mainstream financial

services products. Further, the CFPB should be explicitly prohibited from enacting policies and oversight beyond what is in the statute.

Consumers and the overall economy also depend upon a strong, vibrant insurance sector, which helps protect consumers and businesses and provides stability and resiliency during critical times. Although insurance is state regulated, the existing federal regulatory framework impacts insurers and their consumers both directly and indirectly. FSR supports efforts to tailor the regulatory regime that touches on insurers.

The Federal Reserve has rule making authority and oversight functions for non-bank SIFIs and insurers that own or operate a savings and loan holding company. Our submission already detailed our belief that FSOC's authority to designate non-banks, including insurers, should be repealed. But for any insurers subject to Federal Reserve supervision, it is important that such oversight reflect the unique capital, business and risk profile of insurers. Federal Reserve involvement should appropriately accommodate the business of insurance and ensure it does not duplicate or conflict with supervisory efforts by the state departments of insurance and other functional regulators. This will ensure that standards and supervision are appropriate and do not needlessly strain resources that can be used to develop and deliver the key products and services that enable Americans to save, protect their homes, businesses and loved ones, as well as recover when tragedy strikes.

There are several proposals that seek to support and provide legal clarity to the ongoing convergence of financial services and technology – fintech – which have the potential to bring millions of new people into the financial system. For example, the MOBILE Act, new legislation introduced in the House as H.R. 1457, would expand access to traditionally underserved communities by making it possible to open an account online or from a mobile device without ever having to visit a bank branch or office. This would benefit those living in rural areas in particular, where choices in branch banking can be limited. Also, legislation that facilitates innovation and responsible experimentation in the financial sector should be encouraged. In the last Congress, H.R. 6118, the Financial Services Innovation Act, would have provided certain legal protections and driven innovation within the federal banking agencies to encourage innovation while not putting at risk consumer protections or the safety and soundness of the banking system. We would also support legislation that modernizes the ability to access and utilize data across federal agencies. Financial institutions often rely on data maintained by federal agencies for a variety of purposes, such as small business loan underwriting, fraud and identity theft reduction, and Military Lending Act compliance. Modernizing the means by which government data are accessed through real-time web-based technologies would enhance the ability of lenders to make smart, sound decisions and deploy capital into the economy.

Finally, the Committee does not only have an important legislative function, it will also play an important role in its advice and consent obligations, ensuring that the Administration nominates and the Senate confirms regulators and others who are laser-focused on improving economic growth. Positions such as the Vice Chair of Supervision at the Federal Reserve, the Comptroller of the Currency, Chair of the Federal Deposit

Insurance Corporation and other important jobs are critical to getting our economy moving. One particularly notable area for economic growth would be to work toward a full complement of directors at the Export-Import Bank. Because of vacant board positions, the Export-Import Bank is limited in the financing support they are able to provide for manufacturers and exporters. A fully operational Export-Import Bank will provide greater economic growth, expand U.S. exports and create U.S. jobs.

Once again, we commend you for focusing on economic growth. We are hopeful that Republicans and Democrats on the Committee and in the Senate can work together this year to make significant progress and overcome some of the more partisan attitudes dominant in today's political environment. Improving economic growth will help all of our citizens; there shouldn't be any controversy about that.

We look forward to working together with you and the whole Committee moving forward. Please do not hesitate to contact me or FSR's Government Affairs team on these or other issues to improve our economy.

Sincerely,

A handwritten signature in black ink that reads "Francis Creighton". The signature is written in a cursive, flowing style.

Francis Creighton
Executive Vice President of Government Affairs