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An Asset Management Perspective on International Financial Regulatory Reform

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I. Introduction

On February 3, 2017, the President issued an Executive Order that referenced U.S. participation in international bodies.[1] This, in combination with Congressman McHenry's letter to Federal Reserve Chair Yellen[2] about the Federal Reserve's role in international negotiations, raised concerns regarding continued participation by the U.S. in international standard setting bodies focused on the financial sector and the reform agendas these bodies have agreed upon over the past several years. Over the past few months, we have been asked for our perspective on these developments as well as for our recommendations for international engagement on financial regulation. We have prepared this compendium of remarks delivered at several events,[3] reflecting our perspectives and experiences as an asset manager.

II. Current Framework for International Coordination

Let me start by providing some background on the current framework for international coordination of financial regulation. Global standard setting bodies and international coordination have been part of our financial system for many years. Prior to the 2008 Financial Crisis (Crisis), there were international standard setters, and countries held bilateral discussions. Since then, these entities have been given broader mandates and their work has intensified dramatically. In April 2009, the G-20 created the Financial Stability Board (FSB). Its mission is to "coordinate at the international level the work of national financial authorities and international standard setting bodies in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. In collaboration with the international financial institutions, the FSB will address vulnerabilities affecting financial systems in the interest of global financial stability."[4] Since the Crisis, global coordination has resulted in a safer, sounder financial system.

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1 The White House, Executive Order, Core Principles for Regulating the United States Financial System (Feb. 3, 2017), available at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states (Executive Order on Principles for Regulating the U.S. Financial System). One of the core principles is to "advance American interests in international financial regulatory negotiations and meetings."

2 Representative Patrick McHenry (R-NC) currently serves as Chief Deputy Whip and Vice Chairman of the House Financial Services Committee, in addition to other roles in Congress. *See* Geoffrey Smith, Fortune, Read the Full Cease-and-Desist Letter a Senior Congressman Just Sent to Janet Yellen (Feb. 3, 2017), available at http://fortune.com/2017/02/03/read-the-full-cease-and-desist-letter-a-senior-congressman-just-sent-to-janet-yellen/ (Rep. McHenry Letter to Federal Reserve Chair Yellen).

3 Federal Reserve Bank of Atlanta, 22nd Annual Financial Markets Conference - Managing Global Financial Risks: Shifting Sands and Shock Waves, May 7-9, 2017; Harvard Law School Program on International Financial Systems, 2017 Europe – U.S. Symposium, Mar. 29-31, 2017; Peterson Institute for International Economics, U.S. Interest in International Financial Cooperation, Mar. 14, 2017.

4 Financial Stability Board Charter (Apr. 2009), available at http://www.fsb.org/wp-content/uploads/r_090925d.pdf?page_moved=1.

Global Standard Setting Bodies in the FSB Compendium

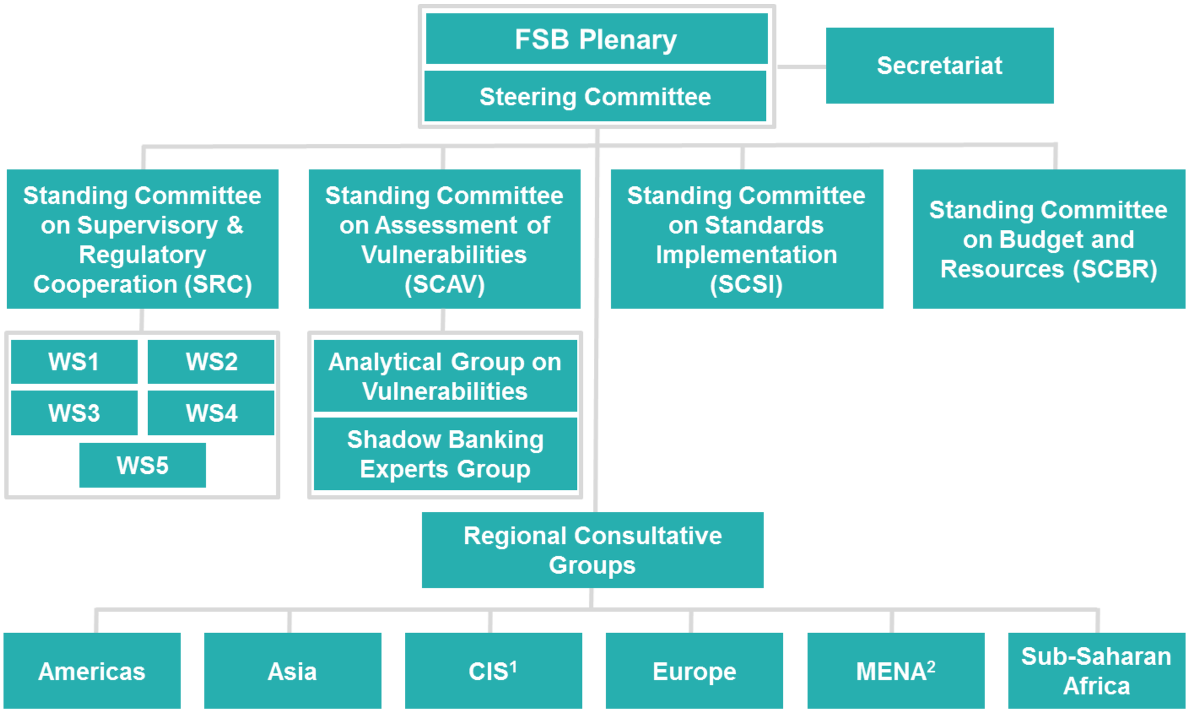
BCBS	Basel Committee on Banking Supervision
CGFS	Committee on the Global Financial System
CPMI	Committee on Payments and Market Infrastructure
FATF	Financial Action Task Force on Money Laundering
FSB	Financial Stability Board
IADI	International Association of Deposit Insurers
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
IAASB	International Auditing and Assurance Standards Board
IMF	International Monetary Fund
IOPS	International Organization of Pension Supervisors
IOSCO	International Organization of Securities Commissions
JF	Joint Forum, includes BCBS, IOSCO, and IAIS
OECD	Organization for Economic Cooperation and Development
WB	World Bank

Source: FSB, Standard-Setting Bodies in the Compendium, available at http://www.fsb.org/what-we-do/about-the-compendium-of-standards/wssb/. Accessed Jul. 2017.

Today, there are *fifteen* global standard setting bodies recognized by the FSB. Each of these entities has its own structure and focus, and there is extensive interaction between them. This system is extraordinarily complex and can be difficult to understand. Just looking at the FSB, membership includes G-20 countries, plus the IMF, BIS, OECD, World Bank, BCBS, CGFS, CPMI, IAIS, IASB, IOSCO, and more. Most of the Principals are Governors of central banks, Finance Ministers, heads of national securities regulators, or heads of other participating bodies. The FSB Plenary – the official decision-making body of the FSB – is comprised of the Principals across all member organizations. The Steering Committee is a subset of the Plenary; it provides operational guidance between meetings to carry forward the directions of the FSB and to prepare for the Plenary meetings. In addition, the Secretariat is extremely important as it staffs all meetings, prepares meeting agendas and materials, and handles invitations.

The FSB Plenary created several "standing committees," each with a specific focus. These committees can have multiple working groups. The Plenary also created six regional consultative groups. Importantly, the FSB is just one organization, and their meetings move around the world. Keep in mind this description does not include the international organizational structures or meeting locations of the other 15 standard setting bodies recognized by the FSB. Taken together, the global landscape can be confusing for private sector entities to navigate.

FSB Organizational Structure



For illustrative purposes only. Not comprehensive of all workstreams (WS) and sub-groups. Workstream 1: The regulation of banks interactions with shadowing banking entities; Workstream 2: the regulatory reform of money market funds; Workstream 3: the regulation of other shadow banking entities; Workstream 4: the regulation of securitisation; Workstream 5: the regulation of securities lending and repos. Source: FSB, Organization Chart (Sep. 2016), available at http://www.fsb.org/wp-content/uploads/FSB-Organisation-Chart-as-of-21-Apr-2015.pdf; FSB, Strengthening Oversight and Regulation of Shadow Banking (Oct. 27, 2011), available at http://www.fsb.org/wp-content/uploads/r_111027a.pdf?page_moved=1; FSB Global Shadow Banking Monitoring Report 2016 (May 2017), available at http://www.fsb.org/wp-content/uploads/global-shadow-banking-monitoring-report-2016.pdf. 1) Commonwealth of Independent States, 2) Middle East and North Africa.

III. Post-Crisis Regulations have Strengthened the Financial System

Stepping back, it is important to recognize that the financial system is safer now than it was pre-Crisis. The best evidence of this is the fact that there have been numerous market events over the past few years with "winners" and "losers," none of which generated a systemic risk event or led to the failure of a global systemically important bank (G-SIB).

Examples of Market Volatility

Date	Event	Market Impact
Oct. 2014	U.S. Treasury "Flash Rally"	Intra-day volatility
Oct. 2014	Bank of Japan and Government Pension Investment Fund announcements about asset allocation shifts	7% increase in Nikkei Index[a]
Jan. 2015	Swiss National Bank lifted currency cap on Swiss franc	15% decline in Swiss Market Index[b]
Jan. 2015	European Central Bank announced expansion of QE	5% European equity market rally[c]
Aug. 2015	Equity market opening issues on August 24	Intra-day volatility
Jun. 2016	UK EU referendum result	7% drop in FTSE 250; 11% drop in FTSE 350[d]
Oct. 2016	UK Pound Flash Crash	Intra-day volatility

a) WSJ, using end of day data for Oct. 27-31, 2014. As of Nov. 2014.
b) Bloomberg, using end of day data for Jan. 12-16, 2015. As of Jan. 2015.
c) WSJ, using end of day data for Jan. 19-23, 2015. As of Jan. 2015.
d) The Guardian, Brexit fallout – the economic impact in six key charts (Jul. 8, 2016), available at https://www.theguardian.com/business/2016/jul/08/brexit-fallout-the-economic-impact-in-six-key-charts.

Since 2008, there has been a tsunami of regulation encompassing hundreds of new rules with compliance and reporting requirements across a number of areas that impact financial services. We have grouped this body of rules into five categories: (i) bank capital, stress testing, and liquidity, (ii) over-the-counter (OTC) derivatives, (iii) cash investing, (iv) private funds, and (v) mutual funds other than money market funds (MMFs). This has led to thousands of pages to digest for both industry participants and regulators. A simple example is the proliferation of new regulatory reporting requirements for asset managers.

Post-Crisis Financial Regulatory Reforms

Key Pieces of Financial Legislation / Regulation

- Basel Accords
- Solvency II
- Volcker, Vickers, Liikanen
- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- European Market Infrastructure Regulation (EMIR)
- Markets in Financial Instruments Directive (MiFID II / MiFIR)
- SEC Reform of Money Market Funds (2010 and 2014)
- OCC Reforms for Short Term Investment Funds (STIF) in 2012
- ESMA Guidelines on Money Market Funds in 2010
- ESMA Guidelines on ETFs and other UCITS issues in 2012
- Alternative Investment Fund Managers Directive (AIFMD)
- SEC Rules on Reporting, Liquidity Risk Management, and Swing Pricing in 2016

Key Reforms

- Bank Capital, Stress Testing & Liquidity Rules
- OTC Derivatives Rules
- Improved Cash Investing Rules
- Private / Alternative Funds Reporting & Registration
- Mutual Fund Rules & Reporting

For illustrative purposes only. Not a comprehensive list. As of Jul. 2017.

Post-Crisis Regulatory Reporting Requirements for Asset Management

US	
Form PF	Private fund reporting to SEC
Form PQR	Private fund reporting to CFTC
Form PR	Reporting for commodity futures advisors to CTA
Form N-CR	Money market fund reporting on material events and sponsor support
Form N-MFP	Monthly money market fund reporting on portfolio holdings
Form N-PORT	Monthly mutual fund reporting to SEC on portfolio holdings
Form N-CEN	Annual mutual fund reporting to SEC on census-type information
Form N-LIQUID	Mutual fund reporting if level of illiquid assets exceeds 15% of net assets
Europe	
AIFMD	Private fund reporting
MiFID II	Pre- and post-trade reporting
PRIIPs	Pre-contractual disclosure reporting for retail products
SRD	Reporting on portfolio holdings, turnover, and costs
EMIR	Derivatives transaction reporting
SFTR	Securities finance transaction reporting
MMFR	Reporting for cash funds on portfolio holdings and more

For illustrative purposes only. Not a comprehensive list. As of Jul. 2017.

IV. The FSB's Initiatives in Asset Management

The Crisis highlighted shortcomings in the regulatory framework for financial services. In response, as part of its financial stability mandate, the FSB cast a broad net in assessing the financial sector and determining what actions to take. Most people would agree that banks, mortgages, securitizations, and OTC derivatives were at the heart of the financial crisis, and that is where the FSB's work began. Very quickly, everything outside of the traditional banking sector took on the pejorative label "shadow banking." Following the banking agreements commonly known as the Basel Accords, the FSB turned its focus to other types of financial institutions, including insurers, asset managers, finance companies, and broker-dealers, as well as practices such as OTC derivatives and securities financing transactions (SFTs).[5] Within the FSB structure, several groups have focused on various aspects of asset management. Of particular note, Workstream Three (WS3) within the Standing Committee on Supervisory & Regulatory Cooperation (SRC), and the Standing Committee on Assessment of Vulnerabilities (SCAV) have initiated asset management projects looking at both companies and funds.

Given the central bank-oriented membership of the FSB and its committees, and concerns regarding bank-owned funds and MMFs, the approach to asset management began with a number of assumptions. In hindsight, some of the early hypotheses about asset management were based on incorrect data or misinterpretations of data.[6] In some cases, problems

5 Including through the activities of workstream 5, which is focused on securities lending and repos.

6 For example, the Federal Reserve Z.1 data showing the holders of corporate and foreign bonds overestimated holdings by mutual funds. In 2016, the Federal Reserve revised their data. The revised data shows that mutual funds held 17% of corporate and foreign bonds in 201, down from their original estimate of 24%. This revision reflects an update to the Federal Reserve methodology to take into account matured bonds to more accurately reflect the value of bond holdings by mutual

experienced with MMFs during the Crisis were extrapolated to all funds – even though mutual funds and private funds are fundamentally different than MMFs.

The asset management process began in January 2014 with the FSB's first consultation on "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (NBNI G-SIFIs)".[7] Many asset managers were surprised by this consultation as they had never engaged with these international standard setters, and they found the approach to be extremely bank-centric despite the fact that the business models of asset managers are fundamentally different than those of banks. Given the banking lens, the focus began on the largest firms and the largest funds with a desire to create SIFI designations that could lead to additional supervision, heightened capital requirements and additional regulatory oversight. However, size is not a key determinant of risk in asset management. For example, looking at the Reserve Primary Fund[8] and more recently the Third Avenue Focused Credit Fund,[9] neither of these funds were the largest.

The FSB's 2014 consultation was the beginning of a journey for policy makers to better understand asset management and for asset managers to better understand the concerns of policy makers and their policy objectives. As many industry participants pointed out, in order to reduce risk in asset management, changes needed to be made to products and activities system-wide.[10] Three consultations and many roundtables and meetings later, the FSB's Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities, published in January 2017,[11] made fourteen recommendations largely focused on liquidity and leverage in funds. IOSCO has since published additional guidance on the liquidity recommendations, issuing two documents for consultation on this topic in July 2017: (i) a consultation to update 2013 Principles of Liquidity Risk Management for Collective Investment Scheme (CIS)[12] and (ii) a consultation on Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration.[13] Over the past few years, the SEC, under the

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funds. See BlackRock, *ViewPoint*, Addressing Market Liquidity: A Broader Perspective on Today's Bond Markets (Nov. 2016), available at https://www.blackrock.com/corporate/en-us/literature/whitepaper/viewpoint-liquidity-bond-markets-broader-perspective-february-2016.pdf.

7 FSB, Consultative Document, Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (Jan. 8, 2014), available at http://www.fsb.org/wp-content/uploads/r_140108.pdf.

8 The Reserve Primary Fund broke the buck in September 2008 with assets of around $62 billion. Diya Gullapalli, Shefali Anand and Daisy Maxey, The Wall Street Journal (Sep. 17, 2008), available at https://www.wsj.com/articles/SB122160102128644897?mg=prod/accounts-wsj.

9 The Third Avenue Focused Credit Fund announced its closure in December 2015 due to its inability to meet redemptions. At the time of the announcement to close, the fund had $800 million in assets under management. Stephen Foley and Joe Rennison, The Financial Times (Dec. 10, 2015), available at https://www.ft.com/content/d319da8c-9f93-11e5-8613-08e211ea5317.

10 BlackRock, Comments on the Consultative Document of Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (Apr. 4, 2014), available at https://www.blackrock.com/corporate/en-us/literature/publication/nbni-gsifi-fsb-iosco-040414.pdf; Investment Company Institute, Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies (Apr. 7, 2014), available at http://www.fsb.org/wp-content/uploads/r_140423af.pdf; Securities Industry and Financial Markets Association, Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (Apr. 4, 2014), available at http://www.fsb.org/wp-content/uploads/r_140423an.pdf.

11 FSB, Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities (Jan. 12, 2017), available at http://www.fsb.org/2017/01/policy-recommendations-to-address-structural-vulnerabilities-from-asset-management-activities/.

12 IOSCO, Consultation on CIS Liquidity Risk Management Recommendations (Jul. 6, 2017), available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD573.pdf.

13 IOSCO, Consultative Report, Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration (Jul. 6, 2017), available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD574.pdf.

leadership of former Chair White, similarly undertook a program of reforms to address structural reforms for MMFs, data gaps for registered funds, and liquidity risk management in funds.

In addition to this work on funds, asset managers have become more active in international financial regulatory deliberations more broadly, including discussions on market structure for equities, fixed income, and derivatives. In these conversations, we assess policy ideas from the perspective that we support regulatory regimes that increase financial markets transparency, protect investors, and facilitate responsible growth of capital markets.

V. <u>Current Focus of Global Standard Setting Bodies</u>

Today, global standard setting bodies continue to examine a variety of areas across financial services, including regulation for central clearing counterparties (CCPs), stress testing, compensation schemes, cyber security, FinTech, climate change, and more. As we consider the current focus of these standard setters, we recognize that global consistency can avoid regulatory arbitrage across borders. However, we also note that it is essential to factor in proportionality and ensure that rules are tailored appropriately to the entities or products and services under consideration.

Focus Areas of International Standard Setting Bodies

FSB
- Bank Capital and Liquidity
- CCP Resolution
- Framework for Review of Regulation
- Securities Financing Transactions
- Stress Testing
- Compensation Schemes
- FinTech
- Climate Change

IOSCO
- CCP Resilience and Recovery
- Liquidity Risk Management for Funds
- Use of Derivatives and Leverage for Funds
- Data Privacy and Data Gaps
- Financial Innovation

CPMI
- CCP Resilience and Recovery

OECD
- Base Erosion and Profit Shifting (BEPS)
- Infrastructure Investment
- Corporate Governance

IMF
- Global Financial Stability Report
- Financial Sector Assessment Program

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VI. Regulatory Right-Sizing does not Preclude International Coordination

Before moving forward with additional regulations, it is time to take a pause to evaluate the rules already in place. We need to look at the cumulative impact of existing rules and consider where it is appropriate to recalibrate. We see this effort as similar to the European Commission's Call for Evidence on the EU Regulatory Framework for Financial Services[14] and the FSB's consultation document on a Proposed Framework for Post-Implementation Evaluation of the Effects of the G20 Financial Regulatory Reforms,[15] both of which acknowledge the need to step back and address the cumulative impacts of regulation, recognizing the need to balance resilience with economic growth.

Where can we rationalize or simplify current regulations? Looking at all of the data being reported to regulators, we need to remember that data does not equal information. What data is useful? Can data reporting be streamlined or harmonized to allow greater comparability?

Once this review of existing regulations and reporting requirements is complete, then we should consider if there are any gaps that need to be filled in. **The goal of this evaluation should be to right-size regulation, not to repeal or to deregulate**. Former Federal Reserve Governor Tarullo,[16] Acting Comptroller of the Currency Noreika,[17] Acting CFTC Chairman Giancarlo,[18] SEC Chairman Clayton,[19] and Federal Reserve Governor Powell[20] have each called for regulatory right-sizing or recalibration of the current framework.

The recently issued Executive Orders and Memorandums are in line with this goal. Shortly after taking office, the President directed the U.S. Department of the Treasury (Treasury) to work with the member agencies of the Financial Stability Oversight Council (FSOC) to review existing laws and regulations to ensure they are in line with seven core principles for the U.S. financial system.[21]

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14 European Commission, Consultation Document, Call for Evidence on the EU Regulatory Framework for Financial Services (Sep. 30, 2015), available at http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document_en.pdf.

15 FSB, Consultation Document, Proposed Framework for Post-Implementation Evaluation of the Effects of the G20 Financial Regulatory Reforms (Apr. 11, 2017), available at http://www.fsb.org/wp-content/uploads/Framework-for-the-post-implementation-evaluation-of-the-G20-financial-regulatory-reforms.pdf.

16 Daniel Tarullo, Former Federal Reserve Governor, Departing Thoughts (Apr. 4, 2017), available at https://www.federalreserve.gov/newsevents/speech/tarullo20170404a.htm.

17 Keith Noreika, Acting Comptroller of the Currency, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs (Jun. 22, 2017), available at https://www.banking.senate.gov/public/_cache/files/bdb9805d-8dd8-4685-918b-5ab10647fc1a/A8892D0EBF9BA7162C10C14EEB75D11C.noreika-testimony-6-22-17.pdf.

18 J. Christopher Giancarlo, Acting Chairman of the CFTC, Remarks before the 42nd Annual International Futures Industry Conference (Mar. 15, 2017), available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20 (CFTC Acting Chairman Giancarlo Remarks Mar. 2017).

19 SEC Chairman Clayton, Remarks at the Economic Club of New York (Jul. 12, 2017), available at https://www.sec.gov/news/speech/remarks-economic-club-new-york (SEC Chairman Clayton Remarks Jul. 2017).

20 Jerome Powell, Federal Reserve Governor, Relationship Between Regulation and Economic Growth, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs (Jun. 22, 2017), available at https://www.federalreserve.gov/newsevents/testimony/powell20170622a.htm.

21 Executive Order on Principles for Regulating the U.S. Financial System.

Core Principles for Regulating the U.S. Financial System[22]
a) Empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
b) Prevent taxpayer-funded bailouts;
c) Foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
d) Enable American companies to be competitive with foreign firms in domestic and foreign markets;
e) Advance American interests in international financial regulatory negotiations and meetings;
f) Make regulation efficient, effective, and appropriately tailored; and
g) Restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

In response to this Executive Order, on Jun. 12, 2017, Treasury issued a report on the regulation of banks and credit unions.[23] This report included nearly 100 recommendations to improve the regulatory framework for these institutions. Treasury plans to release three additional reports as part of their response to the President's call for evidence with a focus on (i) capital markets, (ii) asset management and insurance, and (iii) non-bank financial institutions and financial innovation. While this initiative has been characterized by some as "de-regulation," neither the guidance from the Administration nor the report by Treasury call for a wholesale repeal of post-Crisis regulations; rather, the focus is on calibrating existing rules to improve their efficiency and effectiveness.

Through Memorandums, the President has called for Treasury to issue two additional reports. One will be on FSOC processes following a review and evaluation of FSOC. Until this review is complete, all non-bank systemically important financial institution determinations and designations have been paused.[24] And, the second report will be a review of the Orderly Liquidation Authority (OLA).[25]

In addition to these executive actions, the U.S. House of Representatives recently passed a bill that would scale back certain aspects of Dodd-Frank, called the Financial CHOICE Act.[26] This bill has not yet been considered in the Senate. Most commentators believe that we will see legislation addressing specific aspects of Dodd-Frank through piecemeal legislation rather than comprehensive financial services legislation, given the political environment.

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22 Executive Order on Principles for Regulating the U.S. Financial System.

23 The White House, Executive Order, Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), available at https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling.

24 The White House, Presidential Memorandum for the Secretary of the Treasury re: Financial Stability Oversight Council (Apr. 21, 2017), available at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury.

25 The White House, Presidential Memorandum for the Secretary of the Treasury re: Orderly Liquidation Authority (Apr. 21, 2017), available at https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury-0.

26 CHOICE stands for "Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs." One of the key premises of the bill is that banks will have a choice to comply with Dodd-Frank requirements or maintain a simple leverage ratio of 10% and be granted an off-ramp from many of the prudential requirements under Dodd-Frank.

At the independent agency level, Acting CFTC Chairman Giancarlo has laid out a three-part agenda for the CFTC: (i) fostering economic growth, (ii) enhancing U.S. financial markets, and (iii) right-sizing its regulatory footprint.[27] As part of this agenda, he launched Project KISS ("keep it simple stupid"), designed to reduce regulatory burdens and recalibrate existing requirements. Acting Chairman Giancarlo also emphasized his commitment to effective international engagement as an active participant in bodies such as IOSCO. At the SEC, Chairman Clayton recently outlined his agenda, which included a call for the SEC to review its rules retrospectively and listen to investors about where rules are and are not functioning as intended. In addition, Chairman Clayton stated that the SEC "participate[s] in several major international bodies and cooperate[s] with regulators in over 115 foreign jurisdictions. Coordination with, between, and among *all* of these organizations is essential to a well-functioning regulatory environment."[28]

VII. Role of the U.S. in International Financial Standard Setting Bodies

In recent months, there has been increasing focus on the role of the U.S. in international bodies, given the focus of the new Administration and Congress on fostering economic growth and competitive capital markets. For example, Congressman Patrick McHenry, who sits on the Financial Services Committee in the House of Representatives, sent a letter to Federal Reserve Chair Yellen in which he raised concerns about the Federal Reserve's role in negotiating international regulatory standards for financial institutions "without transparency, accountability, or the authority to do so."[29] Federal Reserve Chair Yellen issued a response letter highlighting that the Federal Reserve "can influence the standards in ways that promote the financial stability of the United States and the competitiveness of U.S. firms…Strong global standards also enhance the competitiveness of internationally active U.S. banking firms by creating a more level playing field for all internationally active banking firms."[30]

We do not interpret the President's Executive Orders or statements by senior officials at the agencies responsible for international coordination as a call for the U.S. to disengage. The February 2017 Executive Order emphasized the importance of a U.S. regulatory framework that advances American interests in international financial regulatory negotiations and meetings, which implies that engagement is a priority of the Administration. Likewise, the comments of Acting CFTC Chairman Giancarlo and SEC Chairman Clayton reaffirm the intention of these regulators to continue to participate in international bodies. That said, we expect some changes in the process, such as increased transparency and a commitment to public consultation and increased engagement with practitioners.

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27 CFTC Acting Chairman Giancarlo Remarks Mar. 2017.

28 SEC Chairman Clayton Remarks Jul. 2017.

29 Rep. McHenry Letter to Federal Reserve Chair Yellen.

30 Jonathan Spicer, Reuters, Exclusive: Yellen brushes off warning, says Fed has authority on global talks (Feb. 14, 2017), available at http://www.reuters.com/article/us-usa-fed-yellen-g20-exclusive-idUSKBN15T21E.

VIII. The Path Forward

Looking forward, it is important to recognize that global standards can be mutually beneficial. For example, global standards can create a level playing field and reduce regulatory arbitrage. In an effort to promote global consistency, we recommend that regulators seek to harmonize data reporting. This would allow the industry to produce data more efficiently and enable policy makers to more effectively use data for monitoring products and activities across jurisdictions.

We also recommend changing the paradigm of international coordination by reconsidering the appropriateness of the current system given today's environment. The current framework is complex to navigate, given the myriad of bodies, committees, working groups, and workstreams, often with duplicative and overlapping missions and objectives. Japan Financial Services Agency Commissioner Mori pointed out that there are 140 workstreams taking place under the auspices of the FSB, BCBS, IOSCO and IAIS. Not only is there a proliferation of international workstreams, but there are also different national regulators as well as a variety of think tanks and academics weighing in on the same financial policy issues. Commissioner Mori aptly noted, "All those workstreams have been producing a vast number of new standards or keeping watch over their implementation. Individually each of those rules may make sense, but we have yet to know what effects they may have, collectively and cumulatively, on finance for growth. Too much medicine might make the patient sick rather than healthy."[31]

In addition, we need to recognize that there has been a tsunami of regulation passed, much of it without harmonization across jurisdictions. Before we embark on new regulatory initiatives, it would be helpful to step back and assess where we are. This assessment of the cumulative impact of regulation should consider where we should right-size existing regulation to maintain resilience while encouraging economic growth. From there, regulators should determine what, if anything, should be tweaked, recalibrated, or rationalized. Only after this review is complete does it make sense to look for outstanding gaps.

Finally, we need to recognize that collaboration with industry practitioners is essential to avoid unnecessary rules and unworkable solutions. One example of successful collaboration between the industry and regulators is the recently finalized FX Global Code, which was developed over the course of two years through a partnership between central banks and market participants from 16 different jurisdictions.[32] Before forging ahead, let's collectively assess what has worked well and what can be improved upon.

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[31] Nobuchika Mori, Commissioner, Japan FSA, You cannot see the forest for the trees (Nov. 25, 2015), available at http://www.fsa.go.jp/common/conference/danwa/20151125/01.pdf.

[32] Global Foreign Exchange Committee, FX Global Code (May 2017), available at http://www.globalfxc.org/docs/fx_global.pdf.

Important Information

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