CCMR Priorities for Financial Regulatory Policy

The Committee on Capital Markets Regulation supports reforms that would enhance the competitiveness of U.S. capital markets and the U.S. banking system thereby promoting economic growth and expanding investor opportunities. The following list summarizes the Committee's priorities for financial regulatory policy during the second Trump administration.

Part I addresses capital markets regulation. Part II addresses banking regulation.

I. Capital Markets Regulation

1. ***Clarify SEC position on Gensler rules under litigation:*** The SEC should reconsider its litigation strategy and seek final judgment in pending cases challenging rules finalized under Chair Gensler to ensure consistency with the policy positions of the new administration (i.e., Securities Lending; Short Selling; Climate Disclosure; Tick Sizes & Access Fees; Exchange Access Fees; Open-End Fund Liquidity Disclosures; Dealer Definition; CAT Funding Order). If additional time is needed for the SEC to determine a new policy position or litigation strategy, then the SEC should seek abeyance from the court to provide the necessary time. Ensuring its litigation strategy is consistent with the policy positions of the new administration may include agreeing with petitioners as part of the court proceedings (but we would caution against unilaterally seeking vacatur and remand, as doing so may raise potential issues with the Administrative Procedure Act). If a rule is overturned, then the SEC should not appeal that decision. The SEC should also drop existing appeals, such as for the Dealer Definition rule (and enforcement cases that seek to undermine the court's decision invalidating the Dealer Definition rule). If any rules are upheld, the SEC should then consider the policy and legal implications of reproposing the rules or eliminating them via the public notice-and-comment process. The SEC should also determine its enforcement policy with respect to rules under litigation.

2. ***Clarify intention not to finalize Gensler proposals:*** The SEC should announce that it does not intend to finalize proposals promulgated during Chair Gensler's term that were not finalized by formally dropping them from the SEC's Regulatory Flexibility Agenda. Such rules include Predictive Data Analytics; Security-Based Swaps Disclosures; Order Competition; Regulation Best Execution; Volume Tiers; Regulation SCI; Safeguarding Advisory Client Assets; Amendments Regarding the Definition of Exchange and Alternative Trading Systems; and Open-End Fund Liquidity.

3. ***Encourage companies to go public:*** The SEC should: (1) Allow companies to substitute individual arbitration clauses for securities class actions through an SEC policy statement and opinion confirming the legality of these clauses under federal law and preemption of inconsistent state law; (2) Conduct a full review of cumulative regulatory burdens on public companies including consideration of how disclosure requirements can be tailored beyond

the JOBS Act; (3) Revisit the new SPAC rules recognizing that SPACs do not dilute investors[1] and that underwriter liability and expanded disclosure obligations under the new rule may be excessive and unnecessary; (4) Revisit proxy access rules to reduce burdens on public companies and investors; (5) If the SEC's climate disclosure rule is not overturned by the courts, revisit it with a view to implementing a full liability safe harbor, minimizing compliance burdens, and eliminating double materiality; (6) Examine the need to modernize regulations for short selling in connection with a public offering.

4. ***Advance a framework for digital asset market structure regulation:*** The SEC should: (1) Work with Congress on a new federal legislative structure for digital asset market structure regulation that provides clear criteria for the identification of digital asset securities; (2) Implement guidance clarifying how digital asset trading platforms can comply with securities laws and permit digital securities and non-securities to trade on the same platforms under distinct disclosure regimes; (3) Drop enforcement cases against digital asset trading platforms for failure to register as exchanges, recognizing that it is impossible for them to register under current rules;[2] and (4) Implement guidelines articulating standards for SEC approval of digital asset exchange traded products.

5. ***Address issues in equity market structure:*** The SEC should: (1) Repeal the Consolidated Audit Trail ("CAT") or at least repropose it to be administered by the SEC, eliminate disclosure of personal identifiable information, and revise the CAT funding structure to make it equitable and to eliminate excessive burdens on brokers and investors; (2) Consider reforms to the Regulation National Market System ("NMS") plan process to more equally balance power among exchanges, brokers, and asset managers; (3) Fully implement former Chair Clayton's market data competition plan; (4) Conduct a thorough review of and propose amendments to modernize and streamline Reg SHO; and (5) re-engage with market participants on any further market structure policy changes through roundtables.

6. ***Expand access to private markets:*** The SEC should: (1) Eliminate the 15% restriction on registered closed-end fund investment in private equity and private credit funds; (2) Consider revisions to the accredited investor standard to expand eligibility criteria. The Department of Labor should rescind guidance that casts doubt on the legality of 401(k) investment in private equity funds and issue a new rule that establishes standards and a safe harbor for alternative investments.[3]

7. ***Improve the rulemaking process:*** The SEC and other financial regulators should (1) Propose related rules together, which will avoid conflicts between new rules (as was the

[1] Hal S. Scott & John Gulliver, *No, SPACs Do Not Dilute Investors – A Theoretical and Empirical Analysis* (2024).
[2] CCMR, Cryptoasset Trading Platforms Cannot Register as Securities Exchanges (2023).
[3] CCMR, Expanding Opportunities for Investors and Retirees: Private Equity (2018)

case with the four equity market structure rules, which Gensler proposed separately) and allow for more accurate analyses of cumulative economic effects; (2) ensure that economic analyses are consistent with recent court decisions requiring (i) quantification of costs and benefits, when possible, (ii) consideration of relevant data, and (iii) evidence of asserted market failures. Legislators should expand the statutory requirement to conduct an economic analysis of proposed rulemaking to cover all financial regulators.

8. ***Restore an activities-based approach to addressing systemic risk:*** FSOC should reverse its 2023 modifications to the non-bank SIFI designation process and make clear that an activities-based approach to addressing systemic risk is preferable to an entity-by-entity designation approach and that such determinations should only be made following a cost-benefit analysis.[4]

9. ***Rationalize enforcement policies:*** The SEC and other financial regulators should revise their enforcement policies to: (1) Enhance deterrence by targeting individual wrongdoing; (2) Establish "sentencing guidelines," so penalties are tied to malfeasance or harm caused and are not artificially inflated by the number of violations, which has resulted in appropriately large fines for recordkeeping issues, such as text messages; (3) Cease the practice of expanding regulation through enforcement; and (4) Coordinate enforcement actions among agencies to avoid multiple penalties for the same violation.[5] The SEC and other financial regulators should provide advance notice of conduct that is of concern and provide guidance for how regulated entities can address such concerns, in advance of imposing penalties for failure to address such conduct.

10. ***Eliminate the FTC's anti-private equity merger policy****:* The Federal Trade Commission should abandon its de facto policy of increased scrutiny of private equity-backed acquisitions. The FTC should commit to effecting any significant changes to antitrust policy through the notice and comment rulemaking process.[6] The FTC should also withdraw the Hart-Scott-Rodino Act aggregation rule proposal that would unnecessarily delay and increase the cost of investments and acquisitions in U.S. companies by registered investment companies and other collective investment entities.[7]

11. ***Exempt fixed income securities from SEC Rule 15c2-11:*** The SEC's November 2024 No-Action Letter (NAL) allows broker-dealers to publish quotations in fixed income securities without being subject to the full requirements of SEC Rule 15c2-11. The SEC should consider a rulemaking that would exempt fixed income from SEC Rule 15c2-11.

[4] CCMR, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (2023)
[5] CCMR, Rationalizing Enforcement in the U.S. Financial System (2018)
[6] CCMR, U.S. Financial Regulatory Agencies and the Rule of Law 9-10 (2022).
[7] CCMR, HSR Act Proposal (2021)

12. ***Modernize Anti Money Laundering and Countering the Financing of Terrorism Requirements:*** The Trump Administration should review issues with the existing AML/CFT processes and consider reforms through a transparent process that would establish cost-efficient regulations that take into consideration existing best practices.

13. ***Review the effects of bank capital regulation on capital markets:*** Over time, bank capital rules have grown to have a major impact on the functioning of capital markets and have been identified as a proximate cause of multiple disruptions in the U.S. Treasury Repo market. The SEC and U.S. Treasury Department, which historically have been the major actors in capital markets regulation, have been sidelined with effectively no say in rules like the enhanced supplementary leverage ratio, GSIB surcharge and Federal Reserve stress test—even though those rules impact liquidity in Treasury and other fixed income markets. The Treasury Department should chair an interagency working group to include the SEC, CFTC, NEC and federal banking agencies to perform a cost benefit analysis and determine whether bank regulations are appropriately calibrated. Policymakers should consider (1) Exempting deposits at Federal Reserve Banks and U.S. Treasuries from the supplementary leverage ratio, as they did temporarily during the COVID crisis; and (2) Reforming the stress test's global market shock and the global-systemically-important-bank ("G-SIB") surcharge calculation methodology that go beyond Basel standards.

II. Banking Regulation

1. ***Strengthen the lender of last resort function:*** The 2023 failure of Silicon Valley Bank ("SVB") showed that the lender of last resort ("LLR") function must be improved to respond effectively to a modern bank run. These improvements should include: (1) operational improvements to facilitate faster responses to crises (e.g., instant collateral transfer); (2) rationalizing collateral policies to ensure LLR liquidity is available to solvent banks, and (3) centralizing the LLR function at the Fed's discount window (i.e., divesting the FHLBs of LLR responsibility) to avoid coordination-related delays. [8]

2. ***Improve supervisory practices:*** US banking regulators should reform several of their current supervisory practices:

    - *Eliminate the M component of the CAMELS rating system:* The "M" component of the current CAMELS rating system (Capital adequacy, Asset quality, Management, Earnings, Liquidity and Sensitivity to market risk) should be eliminated. Management is part of each of the other component ratings: for example, management is a key

[8] Hal Scott & Connor Kortje, Lender of Last Resort: The 2023 Banking Crisis & COVID (2024).

component of assessing the bank's Liquidity component, as stress testing and backup planning are part of that exercise. Currently, examiners exercise confidential enforcement authority that can impose significant costs and operational restrictions on a bank that has an unsatisfactory "M" rating, even if the bank is in strong financial condition. Similarly, for bank holding companies, the Federal Reserve should no longer define a bank's composite rating as the lowest of its component ratings. As a result, two thirds of large U.S. banks are currently rated as being in unsatisfactory condition, and thereby implicitly prohibited from engaging in M&A or in some cases organic growth.

- *Elevating and Clarifying MRAs:* Only Matters Requiring Attention "MRAs" or Matters Requiring Immediate Attention "MRIA" should influence bank ratings, and MRAs and MRIAs should be defined by regulation. This definition should *include* material risk to safety and soundness or violations of law. It should *exclude specifically* reputational risk, climate risk, operational risk IT, vendor management, compensation (except for top 20 most senior or highly compensated), committee assignments – unless so significant as to be a material risk to safety and soundness.

    - *Cease increasing effective capital and liquidity requirements through supervisory discretion*: For example, the Resolution Liquidity Adequacy and Positioning ("RLAP") and Resolution Liquidity Execution Need ("RLEN") components of resolution planning standards currently create binding liquidity requirements for certain large banks that exceed those that liquidity regulations require.

    - *Cease discouraging banks' use of emergency liquidity facilities:* Banks continue to report that supervisors discourage banks' use of the Fed's discount window. This practice may cause banks to avoid legitimate use of discount window borrowing that reduces the risk of a banking crisis.

    - *Refocus supervisory priorities on material financial risks*: Supervisors increasingly apply informal and opaque criteria that compel or dissuade banks from certain legitimate business activities. The misplaced priorities of bank supervisors were exemplified by the 2023 banking crisis, where supervisors issued multiple "matters requiring attention" relating to various issues but did not address the issues that resulted in SVB's failure. Supervisors should refocus on issues that present material risks to banks' financial conditions.

3. ***Enhance transparency and address unwarranted volatility in stress testing:*** The Fed should subject the stress test's economic scenarios and models for estimating bank losses to the public notice-and-comment rulemaking process. The Fed's recent statement indicates that the Fed may be moving in this direction.[9] Such reforms would enhance the accuracy of the tests and reduce unnecessary volatility thereby enhancing financial stability.

4. ***Enhance transparency in living will requirements:*** The Fed and FDIC should further develop the criteria for evaluating banks' "living will" resolution plans through the notice-and-comment rulemaking process. Doing so will (1) increase market confidence in the effectiveness of banks' resolution plans, (2) reduce banks' compliance costs by allowing them to more efficiently design their plans to meet relevant requirements, and (3) reduce the likelihood of a legal challenge under the APA. Specifically, the Fed and FDIC should develop via rulemaking standards for liquidity and capital pre-positioning requirements and expectations. The Fed and FDIC should also consider reducing internal Total Loss Absorbing Capital Requirements ("iTLAC") to 75% of their current requirement on a reciprocal basis with other trusted jurisdictions, including the United Kingdom and Japan.

5. ***Redesign liquidity requirements:*** The 2023 SVB crisis called into question the effectiveness of the current liquidity framework in stemming contagion. Policymakers should consider including a bank's discount window borrowing capacity instead of solely requiring banks to hold minimum quantities of specified asset classes.

6. ***Reform the CFPB***: The CFPB does not have a legal funding source given the Fed's ongoing operational losses. The President could therefore issue an executive order directing the CFPB to immediately cease operations. In any event, legislation should (1) amend the CFPB's funding statute to provide for funding through the typical appropriations process, and (2) narrow the CFPB's scope of authority. In addition, a new CFPB Director should roll back recent rulemakings that amount to statutory overreach, including but not limited to the credit card late fees and overdraft rulemakings, as well as the guidance, interpretive rules, advisory opinions, and blog posts that expand the reach of the law.

7. ***Rescind Passivity Requirement Proposals:*** The FDIC should rescind its proposal that would establish new passivity agreement requirements. Passive ownership requirements must involve coordination among bank regulators, including the Federal Reserve and Office of the Comptroller of the Currency, and should not undermine banks' access to long-term, stable capital.[10]

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[9] Federal Reserve, Press Release (Dec. 23, 2024).
[10] CCMR, Regulations Implementing the Change in Bank Control Act (2024)

8. ***Remake the Basel III Endgame proposal:*** The banking agencies' 2023 proposal to implement Basel III Endgame has several fundamental flaws.[11] Regulators should withdraw the proposal and develop a new proposal that addresses these flaws, in particular:

    - *Eliminate gold plating:* The existing proposal would subject US banks to capital requirements for credit and operational risk that significantly exceed Basel standards ("gold plating"). There is no legal or policy basis for gold plating, which disadvantages US banks relative to other major jurisdictions that do not gold plate Basel requirements for their banks.

    - *Consider reincorporating internal models in risk-based capital requirements:* The existing proposal further constrains banks' ability to apply internal models in determining minimum capital requirements. The new proposal should consider reinstating a Basel II-style approach to calculating risk-based capital that relies more on banks' internal models and less on standardized risk weights. Internal models increase the accuracy of risk calculations because banks are naturally incentivized to develop accurate models for their own risk management. Standardized models can increase correlation risk in the banking system because they incentivize uniformity among different banks' asset holdings. If banking regulators retain standardized models, then agencies should simplify the framework to include just a single standardized measure of risk-weighted assets (with models still included in the FRTB).

    - *Avoid double counting*: The existing proposal would require banks to carry capital for the same risks twice. In particular, the new calculation methodologies for market risk (the Fundamental Review of Trading Book) and operational risk overlap with risks that the global market shock and other aspects of the stress test methodologies already include in banks' stress capital buffers.

    - *Potential interference with monetary policy*: The proposal fails to consider how higher capital can undermine the Fed's ability to accurately calibrate and measure the effectiveness of its interest rate policies in addressing inflation. And because capital requirements cannot be rapidly moderated like interest rates, higher capital can make it more difficult to restore lost financing activity with lower interest rates once inflation reaches target levels.

    - *Inadequate economic analysis*: The proposal's economic analysis is based on inadequate data and thus fails to reliably estimate the extent to which it would

[11] CCMR, Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activities (2024)

increase banks' capital requirements. It also fails to substantiate any of the proposal's benefits or to consider or quantify its substantial costs to US banks and the US economy.

- *Ensure appropriate tailoring of capital requirements:* The proposal would have substantially increased capital requirements for regional banks without any rationale. Banks should continue to be subject to capital requirements that are appropriately tailored to their complexity and size.

- *Securities Finance Transactions:* A new proposal should not include mandatory minimum haircut floors for SFTs, as doing so would increase costs and further limit access to banking organization services and products that investors rely on to manage risk and meet investment objectives.

9. ***Revisit the role of international standard setters:*** US policymakers should advocate for enhanced transparency, public comment, and cost-benefit analysis within international standard-setting bodies (e.g., Basel, FSB and IOSCO). They should also submit proposed international financial regulatory standards to the US public notice-and-comment rulemaking process and review and approval by Congress to ensure they are consistent with the US national interest.[12] U.S. agencies should also work with the Basel Committee on Banking Supervision to revise international standards so that they are consistent with reforms implemented in the United States, including for the Fundamental Review of the Trading Book.

[12] CCMR, Enhancing the Regulatory Process for International Standard Setting Bodies (2019). This priority also applies in the area of capital markets regulation (e.g., IASB, IOSCO).