

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

March 9, 2011

The Honorable Timothy Geithner
Secretary
The Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
155 21st Street, N.W.
Washington, DC 20581

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

The Honorable Ben Bernanke
Chairman
The Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, DC 20551

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Mr. John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, S.W., Room 9048
Washington, DC 20219

Dear Sir or Madam:

We are troubled by the volume and pace of rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203). Businesses and consumers wishing to provide thoughtful input on proposed regulations are stymied by the sheer number of proposed rules in the pipeline, the diverse array of issue areas addressed by the proposed rules and the truncated comment periods. Furthermore, the consistency of rules across agencies is likely to be compromised when rules are issued hastily, creating opportunities for regulatory arbitrage. We are likewise concerned that the pace of the rulemaking may lead to failures to properly assess how small businesses will be affected. As a consequence, we request that you address these concerns and explain what steps your agency is taking to ensure that proposed Dodd-Frank rulemakings: (1) provide comment periods sufficient to address the number of proposed rules and breadth of issues addressed by the rules, (2) ensure consistency across agencies, and (3) provide regulatory flexibility for small entities.

The avalanche of new rulemakings will affect businesses and consumers in profound ways, which makes the need to provide sufficient comment periods for those impacted all the more compelling. The Dodd-Frank Act calls for over 300 rules to be issued by financial regulatory agencies.¹ Agencies which in the past issued relatively few rules every year are now responsible for issuing dozens of new rules. For example, the Commodity Futures Trading Commission (CFTC) is required by Dodd-Frank to issue approximately 100 new rules, 60 of which must be issued by July 2011. In the period immediately preceding the financial crisis between 2005 and 2006, the CFTC issued only 11 major rules.² New rules will also be wide in scope and address a number of issue

¹ Congressional Research Service Report R41611, "Upcoming Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act" available at <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R41611&Source=search>

² December 15, 2010 letter from Committee on Capital Markets Regulation to the Chairmen of the Senate Banking and House Financial Services Committees available at http://www.capmksreg.org/pdfs/2010.12.15_Rulemaking_Timeline_Letter.pdf compared the pre-Dodd-Frank average annual rulemakings volume for the independent financial regulators with post-Dodd Frank rulemaking requirements.

areas-- the Securities and Exchange Commission identified 29 separate areas³ that require rulemakings under Dodd-Frank this year and the CFTC identified 30. The number and breadth of new rules make it harder for affected entities to provide thoughtful comments to issuing agencies. However, their input is essential to the rulemaking process. The quality of final rules suffers when insight from entities which will be most impacted by those rules is not available.

In addition to the number and breadth of rulemakings, shorter comment periods further frustrate efforts of businesses and consumers to offer valuable guidance on proposed rules. The Administrative Procedure Act (APA) requires a formal notice and comment period. An analysis conducted by the Committee on Capital Markets Regulation⁴ revealed that comment periods for rulemakings from the independent financial regulators (SEC, CFTC, FDIC and Federal Reserve) lasted more than 60 days on average between 2005 and 2006. Usual and recommended regulatory practice is at least 60 days for all but insubstantial rules. Moreover, though not binding on independent agencies, Executive Order 13,563 provides

that "a comment period...should generally be at least 60 days."⁵ In contrast, the average comment period for Dodd-Frank rules issued within the first three months of enactment was just over 30 days. Currently, the comment period for rules from these agencies ranges from 30 to 45 days.

The current Dodd-Frank rulemaking process also creates difficulties for the regulators themselves. The volume and pace of Dodd-Frank rulemakings increase the likelihood of conflicting rulemakings. However, regulatory consistency between agencies is necessary not only for the 43 joint rulemakings required by the law but also more broadly.⁶ Executive Order 13,563 likewise directs affected agencies to "attempt to promote... coordination, simplification, and harmonization."⁷ In testimony before the House Financial Services Committee on January 26, 2011, Professor Hal Scott of the Harvard Law School characterized the current rulemaking under Dodd-Frank as a "process in which the promulgation of rules lacks overall consistency and direction."⁸ Professor Scott's testimony cited conflicts in separate rules issued by the FDIC and SEC regarding securitization. The rules were intended to be joint rulemakings between the agencies.

Finally, it is crucial that any rules issued under Dodd-Frank ensure regulatory flexibility with regard to small businesses. The Regulatory Flexibility Act⁹ (RFA) requires Federal agencies to determine whether their rules will have an impact on a significant number of small entities, and to assess and mitigate the disproportionate cost of Federal regulation on small business. Small businesses are also protected by provisions contained in section 1100 G of Dodd-Frank which require the Consumer Financial Protection Bureau (CFPB) to convene small business review panels for rules affecting a large number of small businesses and to consider the impact rules will have on cost of credit for small businesses. The pace and volume of rulemakings must not prevent agencies

³ SEC Dodd-Frank Upcoming Activity available at <http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml>.

⁴ December 15, 2010 letter from Committee on Capital Markets Regulation.

⁵ Exec. Order No. 13,563, 74 Fed. Reg. 3821 (Jan. 18, 2011), sec. 2 (b).

⁶ Congressional Research Service Report R41472, "Rulemaking Requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act" available at <http://www.crs.gov/Products/R/PDF/R41472.pdf>.

⁷ Exec. Order 13,563 at sec. 3.

⁸ Testimony of Hal Scott, Harvard Law School before the House Financial Services Committee, Full Committee Hearing on "Promoting Economic Recovery and Job Creation: The Road Forward,," January 26, 2010 available at <http://financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1737>.

⁹ 5 U.S.C. §§ 601-612.

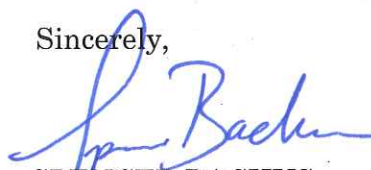
from carrying out analyses required by RFA. When full authority is transferred to the CFPB, that agency should also abide by provisions intended to protect small business from costly regulation.

We look forward to your response to the concerns outlined above. In addition to an explanation of how your agency is addressing our concerns, we also request responses to the following questions:

1. Please describe the significance of the Notice and Comment period provided by your agency. How do you analyze and then incorporate the comments from businesses and consumers likely to be impacted by a given Proposed Rule to shape the Final Rule? Is your agency concerned that the volume and breadth of Dodd-Frank rulemakings could compromise the rulemaking process?
2. How does your agency determine the length of the comment period for a proposed Dodd-Frank rule? Is the complexity or length of the proposed rule taken into account when making this determination? Do you anticipate that statutory deadlines will require you to truncate the customary 60 day comment period? Why was the comment period cut short in earlier Dodd-Frank rulemakings? Do you intend to abide by Executive Order 13,563 that provides "a comment period...should generally be at least 60 days," even if you are the principal of an independent agency and not legally bound by the Order?
3. Do you intend to abide by President Obama's charge in Executive Order 13,563 to promote interagency coordination?
4. Has your agency or your agency's Inspector General identified the Dodd-Frank rulemaking process and/or Dodd-Frank implementation as a management challenge?
5. Which of the rules that your agency plans to propose in 2011 will require a Regulatory Impact Analysis (RIA) (as required for all major rules issued by Executive Branch agencies) or a Regulatory Flexibility Act analysis?
6. Consistent with the Paperwork Reduction Act, what are the estimated paperwork burdens associated with each of your proposed and final Dodd-Frank rulemakings? How do you analyze and then incorporate the comments from businesses and consumers likely to be impacted by these requirements?
7. Please describe your agency's procedures for addressing statutory rulemaking deadlines that it does not anticipate meeting. Has your agency missed any Dodd-Frank rulemaking deadlines? Are there pending Dodd-Frank rulemaking deadlines which your agency does not anticipate meeting?
8. Would allowing additional time for implementation help to ensure that the final rules accomplish the purpose of the rulemaking process?

Please respond to these queries as promptly as possible, but not later than March 25, 2011.

Sincerely,



SPENCER BACHUS
Chairman

Caraym

Scott Barnett

William J. ... MI-09
GA Hill

John Campbell
Dean Schubert

William ...
W. J. ... W27

Michael A. ...
Robert T. King

Patrick McHenry

Nancy Hayworth NY-19
Tom ...

Robert ... MI-2

Richard ... TX-23

Sullivan ...

Bob ... OH-16

Robert ...

Judy Biggart

Frank D. Lucas

Walter B. Jones

Lynn A. ...

T. McArthur (MI-11)

Paul Romulo

Ed Royce

Steven Damm

Ron Paul

Kevin McCarthy

Michael Bachmann

Bill Boyce

Tim

Michael Fitzpatrick

J. Markert
