AMERICANS
FOR FINANCIAL REFORM
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Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

May 20, 2015

Dear Representative,

On behalf of Americans for Financial Reform (AFR), we are writing to express our opposition to several of the bills under consideration in today's subcommittee hearing, as well as our support for HR 1847, the "Swaps Data Repository and Clearinghouse Indemnification Act".[1]

AFR opposes HR 686, the ""Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015", HR 1965, "The Small Company Disclosure Simplification Act", and HR 2354, the "Streamlining Excessive And Costly Regulations Review Act". Due to the number of bills included in today's hearing, we have not yet completed our review of all the legislation included in this markup. After further review we may express additional views. At this time, we would note that based on the May 13th testimony of Mercer Bullard before the Capital Markets subcommittee, we do have grave reservations concerned several of the other bills being marked up today, such as HR 2356 and HR 2357.[2]

HR 686 would eliminate SEC broker-dealer registration requirements for merger and acquisition brokers. While a much narrower version of this legislation could be acceptable, we believe that this legislation poses risks to investors and to the fair conduct of our financial markets.

As currently drafted, HR 686 has multiple flaws:

- It lacks needed investor protections such as provisions to prevent bad actors from taking advantage of exemptions from registration to evade enforcement of securities laws.[3]

- The legislation applies the M&A broker exemption far too broadly, to any acquisition of a company with gross revenues of $250 million or less. This goes far beyond transactions involving the purchase of local small businesses, and would permit numerous deals involving companies of significant size to avoid broker-dealer oversight.

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[1] Americans for Financial Reform is a coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of AFR member groups is available at http://ourfinancialsecurity.org/about/our-coalition/

[2] Bullard, Mercer, "Testimony of Mercer Bullard Before the Subcommittee on Capital Markets and Government Sponsored Enterprises, Legislative Proposals to Enhance Capital Formation and Reduce Regulatory Burdens, Part II", May 13, 2015.

[3] North American Securities Administrators Association, "NASAA Letter to Senators Manchin and Vitter Re S 1923", September 8, 2014

- The lack of an effective provision to prevent transfer to a shell company means that the broker could effectively also take control of the transferred company in a private-equity type transaction.

The potential application to private equity is concerning, as the exemption from broker-dealer registration would restrict the SEC in policing this complex area and interfere with ongoing SEC investigation of potential abuses in private equity involving unregistered broker-dealer activities.[4]

This legislation is also unnecessary, as the SEC has already taken administrative action to exempt merger and acquisition brokers from broker-dealer registration, while preserving capacity to enforce needed investor protections.[5]

Finally, we would also point out that numerous registered broker-dealers who comply fully with SEC broker-dealer conduct requirements are active in arranging deals to sell companies, and this overly broad legislation would expose them to competition from unregulated entities that would not have to comply with important investor protection requirements such as suitability standards. We believe this is inappropriate.

HR 1965 would exempt over 60% of publicly traded companies from requirements to file machine-readable financial statements. AFR opposes this legislation. By banning the SEC from requiring most companies in the market to file computer-readable financial data, this legislation would strike a serious blow against progress in bringing financial reporting into the 21st century. The legislation also directly contradicts recommendations from SEC staff and the SEC's Investor Advisory Committee which call on the agency to move to an open data disclosure system in order to benefit investors, issuers, and the public.[6]

Should Congress wish to address issues in the SEC's implementation of open data requirements, the answer is not to simply exempt the bulk of the market from any requirement to provide machine-readable data to investors. Instead, Congress should take steps that assist the SEC and the issuer community in moving data disclosure forward into the modern era of computerized, machine-readable information. Such steps could significantly improve financial sector transparency.

HR 2354 would impose new statutory requirements on the SEC to review its body of existing regulations. This legislation is unnecessary, and also contains several elements that could harm the SECs ability to protect investors and the market.

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[4] Buccacio, Katherine, "Republicans Look to Ease PE Regulatory Burden", Private Equity Manager, January 13, 2015; Morgenson, Gretchen, "Private Equity's Free Pass", New York Times, September 27, 2014.
[5] Securities and Exchange Commission, "No-Action Letter Re M&A Brokers", January 31, 2014 [Revised February 4, 2014].
[6] Securities and Exchange Commission, "21st Century Disclosure Initiative, Toward Greater Transparency: Modernizing the Securities and Exchange Commission's Disclosure System", January 2009;
Securities and Exchange Commission Investor Advisory Committee, "Recommendations of the Investor as Owner Subcommittee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors", July 25, 2013.

The review of existing regulations is a reasonable agency goal, for example when the intent is to determine whether regulations continue to be effective in protecting investors. And the SEC frequently issues exemptions and no-action letters based on requests from market participants to revisit the utility of past regulations. No legislation is needed to permit such reviews or actions.

In addition, the Regulatory Flexibility Act currently imposes a statutory requirement on the SEC to periodically review all rules that affect a substantial number of small entities. Furthermore the SEC complies with Executive Order 13563, which requires a retrospective review of all rules that "may be outmoded, ineffective, insufficient, or excessively burdensome" and to modify or repeal them as appropriate. These existing requirements and commitments render HR 2354 redundant. They are in addition to the extensive voluntary agency actions referred to above.

The additional review requirement imposed by HR 2354 would also create a dangerous new opportunity for regulated firms to use the courts to challenge agency actions they dislike, even if Congress has required these actions and they are in the public interest. A statutory requirement for a commission vote based on a statutory standard of whether a rule is "outmoded, ineffective, insufficient, or excessively burdensome" would permit litigation and judicial review of agency actions under these new standards. Placing these terms in statute as standards potentially subject to judicial review is quite different than using them as general descriptive terms to guide agency action as was done in EO 13563. Passing HR 2354 could open the door to extensive additional litigation against SEC rules.

In addition, requiring a review and full Commission vote for every existing significant rule every ten years under full Administrative Procedure Act requirements would place a crippling administrative burden on the SEC. As currently drafted, HR 2354 would also require such full-scale reviews and Commission votes for regulations that had been passed recently, within the ten year window so that the SEC could be required under HR 2354 to review rules that had been passed quite recently and may not even have been fully implemented.

We urge you to reject this legislation.

HR 1847 would eliminate Dodd-Frank requirements that derivatives clearinghouses and data repositories indemnify the government for any litigation costs resulting from information sharing arrangements. AFR supports this legislation.

For some years AFR has been concerned with the slow pace at which domestic and international regulators are implementing derivatives data reporting mandates under the Dodd-Frank Act. The requirement that derivatives data be reported to regulators in a form that can be aggregated and used to measure total risk exposures across the financial system is an important part of the improved capacity to monitor systemic risk that should be created by new financial regulations. Clear, consistent, and usable derivatives data would be extremely beneficial to both banking and market regulators in controlling risk, and could create important indirect benefits for financial institutions themselves, many of which still face issues in their own internal systems for aggregating risk exposures.

Unfortunately, progress in derivatives data reporting has been slow, and some of the data collected does not appear to be in a form that can be aggregated. There are many reasons for this slow progress, but it is clear that the ability to share derivatives data between different national regulators and data repositories is crucial for effective data reporting. It appears that the indemnification requirements in Dodd-Frank are creating a barrier to such information sharing. The replacement of these indemnification requirements with a simpler confidentiality agreement, as proposed in HR 1847, would be beneficial in encouraging needed sharing of derivatives data between different jurisdictions and entities. We thus favor this legislation.

Thank you for the opportunity to express our views on this legislation. Should you have additional questions on this issue, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,
Americans for Financial Reform