

Critiquing Cost Benefit Analysis in Financial Regulation, May 19-20, 2014

PAPERS AND BACKGROUND READINGS

Session 1: Background and Updates on CBA: *Business Roundtable*, legislation and policy implications

Background Materials:

- [*Business Roundtable v. SEC* \(D.C. Cir. 2011\)](#)
- [Better Markets, "Setting the Record Straight on Cost-Benefit Analysis and Financial Reform" report](#)
- [AFR Letter in Opposition to HR 1003](#)
- [Rose and Walker, U.S. Chamber of Commerce, The Importance of Cost-Benefit Analysis in Financial Regulation,](#)
- [National Assoc. of Manufacturers v. SEC \(D.C. Cir. 2014\) \(see the Court's reasoning rejecting a cost-benefit challenge to regulations requiring disclosure of conflict minerals\).](#)

Session 2: What Financial Benefits and Costs Do We Count? Considering Societal Costs, Capital Requirements, Derivatives and Other Reforms

Papers and Background Materials:

- [Wallace Turbeville, "A New Perspective on the Costs and Benefits of Financial Regulation," *72 Maryland Law Review* \(2013\)](#)
- [Marcus Stanley, "Can Cost-Benefit Analysis Pass the Cost-Benefit Analysis Test?" \(Presented at AFR conference in 2012\)](#)
- [Brief of Better Markets as Amicus Curiae in Support of CFTC in *ISDA v. CFTC*](#)
- [Admati & Hellwig, "The Case Against Banking's Case for Less Capital," *BloombergView* \(2013\)](#)
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Session 3: Learning from the Environmental Experience

- [Thomas O. McGarity and Rena I. Steinzor, 23 "The End Game of Deregulation: Myopic Risk Management and the Next Catastrophe," *Duke Environmental Law & Policy Forum* \(2012\)](#)
- Amy Sinden, Formality and Informality in Cost-Benefit Analysis— see updated version to be circulated by email attachment.
- [David Driesen, *Legal Theory Lessons from the Financial Crisis*, forthcoming 40 *J. Corp. Law*](#)

Lunch Keynote & Discussion

- [John C. Coates, IV, *Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications* \(2014\)](#)
- *also, participants may be interested in a recent working paper, circulated in email attachment: Cass Sunstein, "Financial Regulation*

and Cost-Benefit Analysis: A Comment,” forthcoming Yale Law Journal Forum 2014.

Session 4: Policy Alternatives and Economics

- [Charles Pouncy, “Recovering from the Recovery: Law and Contemporary Processes of Accumulation by Dispossession,” Journal of Civil Rights & Economic Development \(2011\)](#)
- Timothy Canova, "Central Bank Independence as Agency Capture: A Review of the Empirical Literature,” Banking & Financial Services Policy Report 30:11 (Nov. 2011) (will be circulated to workshop participants)
- [Raúl Carrillo and Rohan Grey, "The Cost of Justice," *Morningside Muckraker* \(2014\)](#)

Here are a few other readings and references for those who have additional time or interest:

[Gerald Epstein, Financial Regulation and Cost-Benefit Analysis for Whom?](#) therealnews.com (Jan. 5, 2013)

[Center for Progressive Reform: Cost-Benefit Analysis: Bad Numbers, Bad Decisions](#) (overview with numerous helpful references).

[Center for Progressive Reform, Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Safety, and Environment \(2011\)](#) analyzing how regulatory cost review by [Office of Information and Regulatory Affairs \(OIRA\)](#) undermines effective regulation.

[Amy Sinden, CPR Blog, Executive Order 12866’s Cost-Benefit Test is still with us and I Can Hear Ben Franklin Rolling Over in his Grave \(Oct. 2, 2013\).](#)

Thomas O. McGarity, A Cost-Benefit State, 50 Admin. Law Rev. 7 (1998).

[Eric A. Posner and E. Glen Weyl, Benefit-Cost Paradigms in Financial Regulation \(2014\)](#), giving an overview of a Univ. of Chicago Conference on Benefit-Cost Analysis of Financial Regulation, and arguing (in part) that on theoretical grounds, BCA should be easier for financial regulation than for other areas of regulation where it is already used, such as health and safety regulation.