AFR Americans for Financial Reform

Issues and Recommended Actions for a Safe and Just Financial System

Despite some progress in regulation since the 2008 financial crisis, large financial institutions are still free to pursue predatory strategies that maximize their own short-term profits while increasing wealth inequality, undermining racial justice, and threatening the stability of the broader economy. We cannot build a more safe and just economy for working people of all races without better control of Wall Street activities, or without public alternatives to the exclusive control of investment and financial services by Wall Street.

Below, we list recommended actions for achieving a safer and more just financial system. Separate documents focus on further recommendations towards these goals with regard to consumer finance and housing. In addition, there is a great deal the financial regulatory agencies need to do to take into account the dangers and risks of climate change and to pursue the urgent imperative to shift private and public resources toward a low carbon economy. These steps are also discussed in detail in a separate memo.

Areas for action highlighted in this document include:

Improve the regulation of big banks and address the continuing 'too big to fail' problem **–** The largest "too big to fail" banks at the intersection of banking and capital markets were the critical drivers and instigators of the 2008 financial crisis which triggered the Great Recession. Despite this, they were not broken up and have in many cases gotten even bigger and more systemically risky since. Regulations designed to control their risks and ensure that their failure would not drag down the broader economy have been undermined by industry lobbying and urgently require strengthening. The dominance of megabanks systematically redirects wealth to their executives and large shareholders and away from everyone else. "Too big to fail" banks are also crucial behind the scenes funders and supporters of dangerous and exploitative practices by non-bank financial entities.

Don't let giant Wall Street nonbanks off the hook; dramatically improve systemic risk regulation of non-banks **–** So called "shadow banks" or non-bank financial intermediaries are becoming ever more important in the financial system and in financial stability. Financial practices in this area are much less well-regulated than in the banking system. Lending through poorly regulated loan securitization markets was a major factor in both the 2008 financial crisis and the post-crisis run-up in corporate debt used to finance takeovers and acquisitions. Non-banks played a crucial role in both cases. In March 2020, the Federal Reserve led a quiet but massive rescue operation to prevent a nonbank crisis as a result of the COVID -19 economic stress. This rescue transferred billions of dollars in taxpayer funds to wealthy money managers and investors, including bailing out deals that were in trouble before the pandemic hit. Oversight and regulation of this sector must be dramatically improved to keep it from continuing to threaten the broader economy.

Rein in abuses of unregulated private funds **–** Private equity and hedge funds are effectively unregulated and are becoming an ever-larger part of the financial system. Major reforms are needed to rein in the harm private equity firms do to workers, consumers and communities by loading unsustainable debt burdens on portfolio companies and driving exploitative practices across a range of industries from health care to retail. These reforms must eliminate the incentives for PE executives to extract wealth from deals at the expense of the long-term health of a company and of public health and safety, and eliminate the ability of fund managers to profit from conflicts of interest at the expense of their pension fund investors. Hedge funds have also used their ownership stakes in companies to force actions that harm workers and communities, and their highly leveraged speculative trading practices have recently threatened the stability of the financial system.

Improve regulation of registered funds such as mutual funds and ETFs **–** Under the New Deal-era Investment Company Act, funds open to the public were required to register with the SEC and follow strict rules on leverage, transparency, liquidity, and conflicts of interest. As financial markets have become more complex and funds have become larger, these protections have been eroded. This creates risks both to investors in these funds and to the broader economy. The Federal Reserve has intervened multiple times over the past decade to support registered funds that endangered market stability. Registered funds are a central part of today's financial markets and need to be better regulated to keep them focused on a core mission of providing a safe investment choice.

Restore transparency and accountability in equity markets by reversing privileges of private markets and properly regulating public companies **–** Another key New Deal reform that is being eroded is the creation of public, liquid, and transparent equity markets, and accompanying disclosure and accountability requirements for large corporations. Today it has become too easy for large, multi-billion-dollar companies to raise funds through purely private markets. This greatly weakens investor protection, public accountability, and responsible corporate governance. We need law and regulation that will once again encourage the growth of public markets, ensure that they facilitate productive investment in the real economy, and promote businesses that are sustainable and serve the interests of all stakeholders. Absent this, Wall Street friendly deregulation threatens the savings of everyday investors, and directs capital to gamesmanship and fraud, rather than businesses with a potential for long term growth. We also need updated public company disclosure requirements to properly inform investors and the public, including with regard to environmental, social, and governance issues.

Protect individual investors in financial markets **–** In the era of defined contribution retirement savings, it is crucial that investors can know where to get trustworthy and reliable financial advice. The SEC and DOL must ensure that all those who present themselves as trustworthy providers of financial advice are required to put investor interest first and are free of conflicts of interest. These rules will stop unscrupulous advisers from taking advantage of investors by charging them excessive fees or guiding them to investments that financially benefit the adviser. Conflicted advice takes billions of dollars a year out of the pockets of middle-class investors and transfers it to Wall Street, undermining retirement security and savings for opportunities like education or starting a business.

Properly regulate derivatives markets **–** The 2008 financial crisis demonstrated that the growth of unregulated markets in complex derivatives posed major risks to the real economy. Dodd-Frank greatly increased the authority of the CFTC and SEC to regulate these markets. While progress has been made, industry lobbying has resulted in a situation where derivatives rules are shot through with loopholes and protections are far weaker than they should be. Significant additional work is needed to make markets for complex derivatives truly transparent and secure. Such reforms will limit the harm that speculative derivatives trading can impose on the real economy, and make sure that losses are borne by those responsible for them.

Change the tax code to reduce incentives for financial engineering and make Wall Street pay its fair share **–** Today's tax code creates incentives for the wealthy to financialize the economy in order to avoid paying their fair share. Meanwhile, predatory behavior by financial institutions has measurably redirected wealth to those already at the top. The fact that this wealth is undertaxed further increases inequality and reinforces excessive incentives for unproductive financial engineering. This planned reduction in tax receipts is then used as an excuse for why the United States cannot "afford" a robust safety net. The IRS and Congress should take action to fully tax Wall Street wealth and pay for programs that reduce inequality and provide social benefits. They should also take steps to eliminate tax code provisions that encourage financial engineering, which will help rebalance the economy in favor of productive investments.

Create and encourage a true "public option" alternative to Wall Street – Even when Wall Street predatory practices can be better controlled, private investment for profit will not fully serve critical public needs. We need institutions that make retail banking services available regardless of income. In investment markets, new institutions are needed that make patient capital available for long-term, high road growth strategies -- including investments in developing a low carbon economy, addressing systemic discrimination and racial inequality, and creating robust infrastructure and industrial development in every region to enable opportunity. These should be delivered via new public institutions that can provide alternatives for investment and financial services that prioritize public needs.

Improve agency performance and enforcement to hold Wall Street accountable when executives and firms rip people off or break the law – Too often, major financial institutions have evaded responsibility and meaningful accountability for the damage they have done to investors, the public, and the economy. Legal tools for both regulators and the public to pursue wrongdoing must be improved, and regulators must effectively use the tools they have.

Respond to risks posed by big tech data collection **–** We need new legislation and regulation to deal with intrusive data collection practices, to protect individual privacy rights, and to ban discriminatory or abusive uses of big data. These must effectively ban intrusive data collection by big tech or financial services providers, rather than simply permitting such data collection with customer opt-in. To combat these abuses, Congress should pass and implement the Data

Accountability and Transparency Act of 2020. This set of issues will be discussed further in the consumer finance memo.

Below, we go into further detail on these issues and list specific recommended executive, regulatory and legislative actions.

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KEY ISSUES AND RECOMMENDED ACTIONS

Limit the power and size of the largest banks and the risk they pose to the economy

The largest "too big to fail" banks at the intersection of banking and capital markets were the critical drivers and instigators of the 2008 financial crisis which triggered the Great Recession. Despite this, they were not broken up and have in many cases gotten even bigger and more systemically risky since. Regulations designed to control their risks and ensure that their failure would not drag down the broader economy have been undermined by industry lobbying and urgently require strengthening. The dominance of megabanks systematically redirects wealth to their executives and large shareholders and away from everyone else. "Too big to fail" banks are also crucial behind the scenes funders and supporters of dangerous and exploitative practices by non-bank financial entities.

Executive and Agency Action - Federal Banking Regulators

- **Strengthen and improve stress testing**. The stress testing regime is critical to maintaining safe capital levels for banks and ensuring that capital varies appropriately through the economic cycle, with tightening during a boom, not just loosening during a crisis. However, the stress testing process has been greatly weakened over the years and effectively gutted by the Trump Administration.
  - **Reverse Trump Administration weakening of the stress testing process.** Restore qualitative objection and key assumptions about capital and balance sheet outcomes during recession.
  - **Increase the rigor of stress test modeling, oversight, and assumptions.** This is needed to ensure that banks cannot game the models used by regulators to hide weaknesses in their balance sheets. In particular, regulators should not disclose specifics of stress testing in advance.
- **Immediately end bank dividends for the duration of the Covid-19 economic stress period.** Banks are currently paying out equity capital to shareholders, increasing the chance that they will have to come to taxpayers for a bailout if the Covid-19 recession causes further economic disruption. This should be banned.
- **Restore bank supervision.** Restore the capacity and authority of bank supervisors to properly oversee and, if necessary, demand change in irresponsible bank practices, a tool which has been seriously weakened under the Trump Administration. Reinstate withdrawn interagency guidance on leveraged lending markets.
- **Use the Fed's authority to require poorly capitalized and poorly managed banks to divest assets.** This would reduce the size and systemic risk of the worst managed banks and create incentives for banks to operate in a more prudent manner.

Executive and Agency Action - Department of Justice

- **Increase scrutiny and retrospective review of bank mergers.** The DOJ should review its record of rubber-stamping bank mega-mergers and seriously assess whether the biggest banks need to be broken up to lower costs, improve service, and safeguard the financial system. The shortcomings of the current bank merger review process have failed to protect the public from mega-banks imposing higher costs on consumers, reducing the volume or quality of banking services, or to prevent the biggest banks from becoming so large that they pose a risk to the entire financial system and real economy. This should also include scrutiny of the CRA implications of these mergers.

Rulemaking - Federal Banking Regulators (Federal Reserve Board, OCC, FDIC)

- **Strengthen large bank capital requirements**. To prevent reliance on taxpayer bailouts, increase requirements for the amount of their own equity capital the largest, most systemically important banks should have to invest to absorb losses in case of financial distress. Set a higher regulatory minimum for the leverage ratios at large banks, transitioning over time if necessary. Increase risk-based capital surcharges at the largest banks to align with higher leverage ratios.
- **Strengthen bank liquidity requirements for large banks.** These key requirements for bank liquid asset holdings were too weak even before they were significantly reduced during the Trump Administration.
    - Roll back the ‘tailoring rules’ loosening of the liquidity coverage ratio for banks with assets between $100B and $700B.
    - Modify the recently finalized Net Stable Funding Ratio to restore elements of the rule that were significantly weakened since the initial proposal. This rule ensures that banks hold enough high-quality liquid assets to survive a thirty-day liquidity crunch.
- **Strengthen regulation of foreign banks,** including imposing liquidity requirements on U.S branches and agencies of foreign banks, and not just on intermediate holding companies. This will ensure that all the sources of risk from foreign banks are adequately covered by US regulators.
- **Reverse relaxation of resolution planning for large banks** and once again require that systemically important banks submit full resolution plans annually, as well as requiring banks with assets in excess of $100B and foreign firms with U.S operations to submit resolution plans tailored to the financial institution on a regular schedule.
- **Complete and implement strong rules on bank bonus pay.** The Dodd-Frank Act instructs bank regulators to prohibit forms of bonus compensation that create incentives for irresponsible risk-taking. This has not been done despite universal

agreement that short term “take the money and run” bonuses are a major driver of dangerous activity by banks. Regulators should finalize a rule at least as strong as the Bank of England’s rule in this area.

- **Reverse the negative impact of bank consolidation and systemic risk on the goals of the Community Reinvestment Act (CRA).** The CRA will be discussed further in the housing memo.

Legislation

- **Pass an omnibus bill plugging key loopholes in financial regulations and rolling back deregulatory changes.**
    - Establish minimum statutory standards for capital, liquidity and other areas where regulators have loosened rules inappropriately.
    - Roll back deregulatory changes mandated in the 2018 EGGRCPA law passed by Congress in order to subject largest banks to appropriate prudential standards.
    - Restore “swaps push out” rules previously gutted in Congress to prevent banks from dealing in the riskiest derivatives.
- Amend the inadequate concentration limits in the Dodd-Frank Act to create an **absolute limit on bank liabilities or other measure of size** based on metrics such as percent of GDP to serve as a backstop for ensuring that banks do not grow too big to fail.

Limit the ability of banks to make hedge-fund like trades and investments in capital markets and strengthen the division between banking and capital markets.

For over 50 years, New Deal-era legislation banned banks from engaging in risky, speculative capital market trading activities that were outside the core business of banking. In the 20 years since this ban was repealed, banks have gotten bigger and more powerful by dominating capital markets, while financial crises have grown more common and more dangerous. Laws that restore these restrictions will make banks smaller and safer and capital markets less susceptible to manipulation.

Executive and Agency Action - Federal Banking Regulators, FSOC, SEC and CFTC

- **Increase regulatory guidance and enforcement against bank trading that runs afoul of Volcker restrictions**. Clearer rules and prohibitions on trading activities will make both compliance and enforcement easier.
- **Improve disclosures on Volcker compliance from regulators and banks.** There is almost no data available on bank trading and covered funds activity that would make it possible to understand how or whether the Volcker Rule is enforced. Regulators and banks should provide public data at the trading desk level so that the public, regulators,

markets, and legislators can better understand trading patterns and Volcker Rule effectiveness.

- **Actively monitor the effectiveness of the Volcker rule**. The FSOC must be ready to suggest and drive additional rounds of changes, with the understanding that it may take several iterations to reach a rule that provides clear guidance and eliminates the activity that Congress put the Volcker rule in place to stop.

<u>Rulemaking - Federal Banking Regulators, SEC and CFTC</u>

- **Improve the Volcker Rule** by preventing large banks with both explicit and implicit public backstops from making speculative trades on their own behalf**.**
    - **Reverse changes made by the Trump Administration.** Reinstate key Volcker Rule provisions controlling bank trading and investment in covered funds that were severely weakened by the Trump Administration.
    - **Strengthen and simplify the Volcker Rule compared to the original 2013 regulation.** Even before the Trump Administration changes, the Volcker Rule was simultaneously too complex and too weak. Both proprietary trading and covered funds components of the rule need to be strengthened by replacing complex exemptions and principles-based guidance with clear bright line rules and eliminating activities that were excluded from coverage under the old rule.
- **Strengthen regulatory restrictions on merchant banking and physical commodities ownership**. As discussed above, these activities are exempt from the Volcker Rule but carry the same kinds of risks that the rule is trying to fix. If Congress does not close the loopholes, regulators can increase the safeguards required to engage in these activities.

<u>Legislation</u>

- **Implement the 2016 Federal Reserve recommendations for closing statutory loopholes regarding bank activities.** In a 2016 report the Federal Reserve recommended that a number of statutory exemptions to regulators authority to restrict activities at Bank Holding Companies (BHCs) should be eliminated. These include:
    - **Ending merchant banking authority** that allows certain BHCs to make equity investments in commercial companies as long as those stakes are held for resale. This effectively serves as an exemption to the restrictions in the Volcker rule.
    - **Close the loophole for Industrial Loan Corporations (ILCs).** ILCs are now permitted to operate as banks without their owners being regulated as bank holding companies.
    - **Eliminate the ability of some BHCs to own or invest in facilities related to the processing of physical commodities like oil.** Clinton-era deregulation permitted

some large Wall Street banks to engage in legacy commodity operations. This also serves as an exemption to the Volcker Rule and exposes banks to major legal, operational and environmental risks outside the traditional banking sphere.

- **Restore traditional Glass-Steagall division between banks and capital markets.** This will restore the firewall that prevented the spread of financial instability from the trading markets to the rest of the economy for sixty years. The demolition of that barrier not only contributed to the financial meltdown, but also facilitated the current dominance of a small number of global mega-banks.

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Develop a stronger framework for dealing with risks posed to the financial system by nonbank actors who are not properly regulated for systemic risk

So called "shadow banks" or non-bank financial intermediaries are becoming ever more important in the financial system and in financial stability. Financial practices in this area are much less well-regulated than in the banking system. Lending through poorly regulated loan securitization markets was a major factor in both the 2008 financial crisis and the post-crisis run-up in corporate debt used to finance takeovers and acquisitions. Non-banks played a crucial role in both cases. In March 2020, the Federal Reserve led a quiet but massive rescue operation to prevent a nonbank crisis as a result of the COVID -19 economic stress. This rescue transferred billions of dollars in taxpayer funds to wealthy money managers and investors, including bailing out deals that were in trouble before the pandemic hit. Oversight and regulation of this sector must be dramatically improved to keep it from continuing to threaten the broader economy.

Executive and Agency Action - FSOC

- **Roll back changes to FSOC designation guidance and strengthen FSOC's ability and willingness to designate risky individual firms.** Specifically, reverse requirements for cost-benefit analysis and the 'likelihood of distress' prerequisite to designation. Reemphasize the systemic significance of individual firms based on size and interconnection, and develop a framework for designation of clearly systemically important firms like large insurance companies.
- **Develop a functional approach for regulating the risk of activities where no individual firm is particularly risky**, but the activity overall poses a risk to financial stability, such as the risk posed by short-term funding markets. Cooperate with relevant regulatory agencies to address cross-cutting issues in repo markets, fund use of leverage, money market funds, and other activities.
- **Develop a plan for limiting the ad hoc safety net provided by Federal Reserve facilities or shifting the costs onto the companies that benefit.** The Federal Reserve has now bailed out the broad financial markets twice in one decade. This creates significant moral hazard and helps market insiders unfairly. Financial agencies should review pre-funding of emergency assistance, conditions for receiving emergency assistance, and the scope and extent of assistance and how it relates to regulatory coverage.
- **Strengthen information sharing among FSOC member regulators, particularly of Form PF hedge fund data collected by the SEC**. FSOC should put in place an expanded and improved process for sharing information among regulators, including bank supervisory information and of private funds information collected by the SEC, so that regulators, FSOC, and OFR can coordinate oversight between connected markets.

- **Increase funding and staffing at the FSOC and Office of Financial Research (OFR)**. Reverse Trump-era reductions and increase funding above Obama-era levels. FSOC and OFR are funded via the Financial Research Fund, not general appropriations, so their funding can be increased without Congressional action.
- **Exercise OFR's subpoena power to close data gaps**. Regulators need additional data about financial market transactions to craft effective rules. OFR has the ability to require companies to provide that data and to share it with those regulators.

Rulemaking - SEC

- **Implement hedge fund leverage ratio requirements** and heightened disclosure regimes discussed below.
- **Significantly improve regulation of the major credit rating agencies** such as Moody's and S&P by attacking systemic conflicts of interest in ratings of securities and improving oversight and enforcement. These credit rating agencies are basically the private regulators of debt securitization markets but are paid by the issuers of these securities, creating a major conflict of interest that needs to be addressed more effectively.
- **Make other regulatory improvements in the markets for loan securitizations**, including by enhancing transparency, such as for private debt offerings, and taking other steps to ensure that incentives for proper underwriting and distribution of loans are in place.

Rulemaking - CFTC

- Implement measures to improve regulation of markets for complex derivatives as discussed below.

Legislation

- **Create legislative standards for automatically designating individual firms as systemically risky**. The current FSOC designation process is susceptible to political and legal challenges that an automatic designation standard would help fix. The standard should make it clear that the FSOC may designate firms that do not meet the automatic designation standard.
- **Add a financial stability mandate to the SEC's mission** and provide it with a commensurate increase in funding, allowing it to effectively monitor and regulate the systemic risk posed by hedge funds. The SEC should be provided with additional resources and staffing to effectively fulfill this function.

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- **Apply risk retention requirements to corporate loan securitizations,** revising statute to negate the impact of a 2018 court decision and thus creating incentives to improve underwriting of corporate debt.
- **Remove legal restrictions on regulation of credit rating agencies** such as Moody's and S&P. These entities are basically the private regulators of critical debt securitization markets, but their business model incorporates major conflicts of interest. The SEC's tools and mandate for regulating them should be strengthened.

Address the regulatory arbitrage employed by non-banks such as high cost lenders and fintechs providing financial services while avoiding the laws designed to protect the public

Consumer non-banks such as fintechs, high cost online installment lenders, and non-bank small business lenders may not yet be large enough to threaten systemic stability, but they are engaged in a significant regulatory arbitrage that increasingly permits them to engage in core banking activity while making loans or engaging in services that banks would not make directly and avoiding bank regulation, endangering consumers, and ultimately potentially the whole regulatory structure. Non-bank regulatory arbitrage in lending and other retail financial services will be discussed further in the consumer finance memo.

<u>Executive and Agency Action - OCC and FDIC</u>

- **Impose a moratorium on new Industrial Loan Corporation (ILC) charters.** Until recommended legislation is passed to close the loophole, nonbanks can use this charter to own a bank while evading systemic supervision by the Fed and avoiding state usury laws. The FDIC should not grant any further charters.
- **Halt plans for a payment charter that would allow nonbanks to take deposits without offering deposit insurance.** The OCC should not offer any of the privileges of a bank charter to nonbanks not subject to prudential regulation.

<u>Rulemaking - OCC and FDIC</u>

- **Eliminate loopholes that allow nonbanks to use banking charters and other bank regulations to avoid regulation of lending activities,** including prohibiting fintechs and nonbanks from gaining access to special purpose national bank charters and other fintech specific banking charters to avoid oversight as well as withdrawing rules that allow "rent-a-bank" agreements to help nonbanks circumvent state lending and consumer protection laws.
- **Heighten regulatory requirements for purchasing a bank with an ILC charter.** The FDIC should require that any company that purchases a bank with an ILC charter be subject to a rigorous review and heightened supervision to compensate for the lack of Federal Reserve supervision.

Legislation

- **Strengthen functional regulation of banking** by designating deposit-like obligations designed by tech platforms, including stablecoins, as deposits requiring approval by banking regulators.
- **Develop a framework for regulating private digital currencies** to ensure that they are not used as a vector for regulatory arbitrage, threats to payment system stability or larger financial stability or exploitation of consumer data.

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Reining in abuses that permit private funds to evade regulation and engage in predatory activities

Private Equity Firms

Private equity firms have rigged the system to create a “heads I win, tails you lose” situation. PE executives gain control of companies while risking negligible amounts of their own money, using corporate structures to avoid responsibility for their debt they use to make the purchase. PE firms then use control of taken over companies to abusively extract money from them, and leave workers and communities saddled with the losses if those companies fail or collapse under the weight of their debt burdens They also profit from consumer and patient harm by squeezing out competition and supercharging predatory or negligent practices in the medical industry. They then use legal and financial engineering to escape liability for wrongdoing and accountability for their decisions.

Executive and Agency Action - SEC

- **Stop private equity funds from preying on pension funds and jeopardizing the retirement of ordinary Americans** by adopting the disclosure requirements discussed below and prohibiting them from waiving their fiduciary obligations to investors.

Executive and Agency Action - Treasury and IRS

- **Improve tax enforcement** against private equity tactics that are already illegal under US tax law.
    - Devote additional IRS enforcement resources to audits of PE funds, asset managers and PE portfolio companies, instead of auditing use of tax credits by low-income workers.
    - Audit management fee waiver structures to determine whether they will be respected or instead recharacterized as disguised fees.
    - Audit monitoring fee structures to determine whether they will be respected or are instead used to hide non-deductible dividends.
    - Enforce new statutory requirement that an asset be held for three years in order to receive carried interest treatment. Increased audits and enforcement of this requirement to remedy the current lack of compliance.

Executive and Agency Action - FTC

- **Increase the FTC's scrutiny of private equity rollups**:
  - Immediately conduct a study of the 9 most active PE firms doing acquisitions in healthcare, real estate and other high-risk spaces to understand the impact of rollups
  - Prepare a broader study of PE rollups and their impact at the national, regional, and local level. Require the study to make a recommendation for FTC and Congressional action on limiting the harmful effects of rollups on communities.

Executive and Agency Action - Multiple Agencies

- **Set strict conditions on the ability of PE-owned companies in sectors with a crucial public interest to receive federal relief funds** if an investment fund or other SEC-registered investment advisor owns a sizable interest.

Rulemaking - FTC

- **Increase the FTC's ability to block private equity rollups**:
  - Adopt a framework for analyzing the competitive impact of private equity rollups reported under an expanded HSR Act. The market concentration metrics often used by the FTC may not adequately capture the cumulative harm from individually small transactions.
  - Broaden HSR Act coverage by rolling back existing regulatory exemptions and expanding definition of control beyond just equity ownership to require reporting on other control arrangements (e.g., via financing agreements).

Rulemaking - Treasury and IRS

- **Eliminate loopholes** that private equity funds take advantage of to avoid paying taxes on the abusive fees that they charge to portfolio companies
  - Clarify when purported monitoring fees paid by the portfolio company should be recharacterized as non-deductible dividends (to which dividend withholding will apply with respect to the private equity fund's foreign investors).
  - Eliminate the ability of private equity firms that operate in the US to use offshore tax havens as vehicles for evading US tax liabilities.
  - Finalize the proposed regulations that clarify when management fees waived in exchange for a larger share of profits are taxed as ordinary income rather than as capital gains.

Legislation

- **Pass the Stop Wall Street Looting Act (SWSLA). The bill:**
    - Makes private equity executives legally and financially liable for the damage they cause. The private equity model provides unique advantages that allow its executives to avoid responsibility for the financial and legal liabilities incurred by the companies they control. This lack of accountability creates incentives for activities that harm workers and communities.
    - Stops looting that enriches PE executives at the expense of workers, communities and companies. Practices include paying themselves a dividend shortly after buying the company or by paying themselves excessive or abusive fees for managing the company.
    - Protects workers if employers go bankrupt. Protects the severance and pensions contributions that workers were promised and moves the priority of worker wages up to ensure that they get paid. The law also restricts pay and bonuses for executives of PE-owned companies that go bankrupt.
    - Closes the carried interest loophole that allows PE owners to pay a lower tax rate on their PE income.
    - Addresses the problem of debt-driven takeovers. Wall Street players that arrange corporate loan securitizations, which frequently fund leveraged buyouts, would have to retain a share of the risks, to make it harder for them to leave others to pay the consequences if things go wrong.
    - Requires PE firms to be clear and honest in disclosing costs and returns and to disclose much more financial information about the firms they buy and own, and prohibits them from manipulating funds to sign away PE advisors' fiduciary obligations.
    - SWSLA should be updated to include.
        - Further reforms to the notice that firms must give their employees before mass layoffs. Strengthen the notice provisions required by the WARN Act for protecting workers when PE owned firms go bankrupt.
        - Stop the practice of collateral stripping, or PE owners removing assets from a company in advance of bankruptcy, leaving less to pay for worker wages and benefits.
        - Require disclosure of specific investors in funds -not just classes - where investors own more than a specified percentage of equity in the fund or where investors belong to certain classes where disclosure does not implicate their privacy, like sovereign wealth funds, public pension funds or other PE firms.

        - Require funds to disclose ESG factors

- **Enact legislation to address private equity abuses in specific key sectors**
    - **Pass strong anti-monopoly / anti 'roll up' legislation** -- Much of the abuses in private equity come from a firm controlling close to a monopoly in certain industries. Congress must let the FTC respond by reducing or eliminating the current $94M target size threshold for triggering premerger reporting requirements under the Hart-Scott-Rodino Act (HSR Act) and eliminate the requirement to automatically adjust the minimum target size threshold for inflation annually.
    - **Limit the ability of private equity firms to harm the public by inserting themselves into the provision of goods with a crucial public interest component**, including:
        - Pass strong legislation against surprise medical billing.
        - Prohibit private equity from owning hospitals, nursing homes, medical clinics, or other healthcare providers.
        - Mandate enhanced disclosures of healthcare firm ownership by private equity firms.
        - Create stronger protections for residents in private equity owned housing or bar private equity purchases of residential mortgage loans, properties and mobile home communities.
        - Limit ownership of multiple newspapers by private equity funds or hedge funds and require divestment by funds that already hold shares in multiple newspapers.
        - Limit the ability of companies in these sectors to receive federal relief funds if an investment fund or other SEC-registered investment advisor owns a sizable interest.

Stop both private equity funds and hedge funds from preying on pension funds and jeopardizing the retirement of ordinary Americans

Private equity and hedge funds have been increasingly successful in drawing pension fund investment as an "alternative asset class". However, the combination of excessive fees and questionably valid methods of calculating investor returns has deprived retirement accounts in order to fund the private equity firms who undermine the livelihoods of beneficiaries. Deceptive practices that private funds use to misrepresent their performance and justify excessive fees should be banned.

Executive and Agency Action - SEC

- **Meaningfully enforce and review existing reporting requirements on reporting Forms PF and ADV** to help the SEC better capture and report the:
  - Propriety of fees and expenses charged by hedge funds and private equity funds to their pension fund clients, including both amount and structure of fees.
  - Adequacy of disclosures of fee monitoring or misallocation of fees by private equity managers.
  - Accuracy of claimed returns relative to Generally Accepted Accounting Principles (GAAP).
- **Disclose aggregate results of these reviews** publicly and on a regular basis.
- **Step up enforcement against private funds that violate existing rules** regarding fees and or reporting of fees or returns.
- **Mandate private funds disclose accurate returns and greater information**
  - In particular, ban the use of misleading metrics, such as the internal rate of return (IRR), especially for funds that are offered to retail investors. Many PE firms report IRR figures that, if taken seriously, would imply that the firms have grown larger than the US economy.
  - Require disclosure to investors of hidden fees, conflict-of-interests, true-risk and liquidity adjusted returns.
  - Mandate standard valuation and fee disclosure metrics so that investors have access to consistent, comparable fee and performance data.

Executive and Agency Action - DOL

- **Prohibit 401(k) plans and other defined contribution plans from offering private equity investments**. Withdraw the information letter permitting plan fiduciaries to include private equity investment options, and promulgate a rule clarifying that offering these investments is a violation of a plan fiduciaries' responsibilities.

Rulemaking - SEC

- **Expand the required public disclosures of position-level data** about hedge fund and PE fund assets, including ownership stakes in private companies. This will help diversified investors to understand their overall exposures and allow academics and advocacy groups to identify emerging risks and trends.
- **Require all large companies and firms, including private funds and companies managed by private funds, to disclose consistent, comparable ESG data**.

- **Prohibit fiduciary duty waivers** by limited partners in a PE or hedge fund as violation of a fund general partner's responsibility. In addition, consider treating agreements by pension funds or others agreeing to waive fiduciary duty as a violation of the plan sponsor's own fiduciary duty.

Legislation

- Implement SWSLA disclosure requirements and fiduciary duty protections as discussed above.

Limiting the risks posed to the economy by underregulated hedge funds

The size of the hedge fund industry has ballooned since its inception but still remains an opaque and lightly regulated part of the market. The industry now poses much greater risks to the broader financial system. Highly leveraged speculation by hedge funds was to blame for the market turmoil in March 2020, triggering a bailout by the Federal Reserve. Hedge funds are also responsible for driving predatory short-term behavior in public companies often by pressuring management of companies to engage in shareholder friendly activity at the cost of the longer-term soundness of the company and its workers.

Administrative Action – FSOC and Banking Regulators

- **Launch a working group among FSOC members to find regulatory mechanisms to limit hedge fund leverage.** Leverage limits should reflect consideration of firm-level leverage, fund-level leverage and the "embedded" leverage of investing in derivatives and other products that provide exposure to large price swings with little up front investment. This working group should build on the efforts of President Obama's Asset Management Working Group initiatives.
- **Define FSOC approach to asset managers** to avoid regulatory arbitrage that allows hedge funds to perform banking functions without any of the safety and soundness rules that banks must follow. Incorporate both designations of individual funds or complexes of funds and an activities based / functional regulation of riskiest parts of asset manager activities. Proper data collection is a key foundation to the success of these efforts.

Rulemaking – SEC

- **Limit the ability of hedge funds to use leverage** to increase their profits by borrowing and using options, increasing the risks to their counterparties of a hedge fund failure, ultimately exposing the whole financial system to the risk from their losses.
- **Require all hedge funds to register with the SEC under the Investment Company Act of 1940.** Either require them to follow the rules that mutual funds currently follow or create a new set of regulatory and registration requirements specific to private funds.

- The registration requirements for a new investment company tier should include limitations on leverage and securities lending, and the expanded disclosure requirements discussed below
- The threshold for registration should be set below the current $100M threshold used for reporting

- **Provide a more granular report of holdings and leverage.** The SEC needs to mandate greater disclosure on hedge fund positions and counterparties in order to accurately assess a hedge fund's risk exposures and leverage.
- **Adopt the position level disclosure requirements discussed** above
- **Expand frequency of hedge fund position reporting in controlling situations**
  - Increase frequency of reporting of positions, shorten the lag at which positions are reported, and expand which securities must be listed on reporting Form 13F.
  - Add acquisition of options to the kinds of positions that must be disclosed on Forms 13D and 13F
- **Require hedge funds to be clear and honest about the fees and expenses they charge** by requiring more robust disclosure and standard methods for calculating fees and expenses and valuation

Legislation

- **Align regulation of the hedge fund industry more closely with mutual funds**. Since hedge funds have been able to benefit from the Federal Reserve backstop without additional costs directly to them, limits must be put in place on how much leverage is capped and increased disclosure should be required to the SEC.
- **Eliminate current bankruptcy priorities for repo lending**. Today, hedge funds and others can borrow the funds they use to operate day to day in exchange for securities that they provide as collateral. If the fund goes bankrupt, the lender gets to skip the bankruptcy line and keep the collateral, denying it to others that have a claim. Eliminating this entitlement will require claimants on collateral to stand in line with all other creditors, including workers and pension funds.
  - Update rules on further lending of held collateral (rehypothecation) to ensure that collateral can be traced and made available as part of a bankrupt fund's estate. This will allow faster resolution of fund bankruptcies and help limit the systemic risk from those bankruptcies.
- **Update antitrust law to require reporting on hedge fund investment in competitors and authorize the FTC to limit such investments**. Today, hedge funds can take positions in multiple competitors and push them to act in potentially collusive ways with limited FTC scrutiny. The FTC should be given the authority to understand how horizontal ownership drives anti-competitive behavior and to step in to stop this behavior.

Improving the regulation of mutual funds, money market funds and other registered investment companies to ensure that their growth does not put either individual investors' retirement or the broader economy at risk

Under the New Deal-era Investment Company Act, funds open to the public were required to register with the SEC and follow strict rules on leverage, transparency, liquidity, and conflicts of interest. As financial markets have become more complex and funds have become larger, these protections have been eroded. This creates risks both to investors in these funds and to the broader economy. The Federal Reserve has intervened multiple times over the past decade to support registered funds that endangered market stability. Registered funds are a central part of today's financial markets and need to be better regulated to keep them focused on a core mission of providing a safe investment choice.

Rulemaking - SEC

- **Strengthen mutual fund liquidity requirements** by capping their holdings of illiquid assets as a low percentage of their total assets. This ensures that mutual funds will be able to cover demand for redemptions by investors. Add a minimum level of holding of highly liquid assets such as US Treasuries to further protect mutual fund liquidity.
    - At a minimum, roll back Trump regulations that allow mutual funds to hold a higher level of illiquid assets
    - Improve the framework for defining whether an asset is in fact "liquid."
    - Assess the need for additional regulations related to liquidity risk specifically posed by holdings of corporate bond funds.
- **Strengthen limits on mutual fund use of derivatives** by requiring funds to comply with clear exposure limits and to maintain sufficient segregated assets to cover foreseeable losses. This ensures that losses on risky derivatives will not unduly jeopardize investments made in the funds. The rule recently finalized by the SEC in this area is far too weak and should be significantly revised.
- **Revisit requirements for Money Market Funds (MMFs)** under Obama era rules to add requirements better designed to protect against high levels of withdrawal that jeopardize the functioning of the fund -- a run on the bank. Such requirements include a capital buffer to absorb losses. The requirements should also include an increased focus on the systemically risky ways that MMF's interact with other parts of the financial system, such as lending to banks and hedge funds.
- **Eliminate exemptions to prohibitions on having anyone be senior to investors** for purposes of bankruptcy. Today, holders of collateral in repo transactions are effectively senior to anyone else, as discussed above. This will prevent mutual funds from engaging in repo lending under the current bankruptcy regime.
- **Significantly revise the Exchange Traded Fund (ETF) rule** including the waiver of the requirement that new ETFs seek an exemptive order when they meet certain criteria. This rule prevents appropriate review, comment and consideration of complex ETFs or

those that pose significant risks to investors. Furthermore, it permits excessive latitude to ETFs in defining indexes and how they are tracked.

- **Improve mutual fund fee disclosures**. Provide investors with comparison of fees to easily compare between different actively managed funds as well as passive, index funds.

Reverse deregulation that undermines public markets and allows use of opaque private markets to avoid scrutiny and investor protections

Another key New Deal reform that is being eroded is the creation of public, liquid, and transparent equity markets, and accompanying disclosure and accountability requirements for large corporations. Today it has become too easy for large, multi-billion-dollar companies to raise funds through purely private markets. This greatly weakens investor protection, public accountability, and responsible corporate governance. We need law and regulation that will once again encourage the growth of public markets, ensure that they facilitate productive investment in the real economy, and promote businesses that are sustainable and serve the interests of all stakeholders. Absent this, Wall Street friendly deregulation threatens the savings of everyday investors, and directs capital to gamesmanship and fraud, rather than businesses with a potential for long term growth. We also need updated public company disclosure requirements to properly inform investors and the public, including with regard to environmental, social, and governance issues.

Executive and Agency Action - SEC

- **Lower the thresholds for when large companies are subject to public company reporting.** The erosion in this threshold has been a significant factor in the ability of multi-billion-dollar companies to remain private.
- **Enhance reporting obligations for use of transaction exemptions** to improve disclosures in private markets and strengthen penalties for failure to report. This will make larger companies who issue in private markets disclose more information.
- **Require that the SEC publish a comprehensive report on the usage of, effects of, and fraud in private offering exemptions** before exemptions can be further loosened. Based on the findings of the report, consider proposals to narrow the existing exemptions.
- **Expand mandatory trade execution reporting to private placement offerings covered by Rule 144A and Regulation D.**

Rulemaking - SEC

- **Limit the threshold to qualify as an “emerging growth company”** exempt from public market rules.
- **Raise the financial thresholds in the Accredited Investor definition to account for inflation** as permitted under Dodd-Frank and index it to inflation going forward. This would more effectively limit sales of private securities to those who are better able to bear the risks of illiquid investments. Consider addition of a streamlined disclosure obligation for sale of private securities to accredited investors who cannot separately negotiate for access to that information.
- **Cancel the “Harmonization” rules changes** recently adopted by the SEC. These rules make it easier for private companies to string together a series of exempt offerings to

avoid registration requirements, expand their ability to conduct general solicitations, and raise the offering limits for several exemptions. The rules circumvent Congressionally created public securities law and further expand private markets at public markets' expense.

Legislation

- **Establish strong requirements for large company reporting.** Any company above a certain size, as defined by employment, revenues, or number of investors, should have to either register its securities and comply with disclosure requirements or at least provide substantive public financial reporting. Any company above a certain size will have debt and equity instruments traded in markets that are accessed by retail investors and institutional investors holding retail investor funds.
- **Reverse Congressional limitations on the SEC's ability to close the loopholes in securities law that exempt companies from public market rules.**

Reset the rules of the public markets so that they facilitate productive investment in the real economy and that businesses are sustainable and serve the interests of all stakeholders

Even for public companies, we need to reform corporate governance to eliminate excessive short-term focus on the stock price and encourage long-term, sustainable growth for themselves, their workers and the environment. Better corporate governance should reverse the growth of short-termism in management, which leads money to flow to a small group of insiders at the expense of other stakeholders and give all stakeholders, including workers, a real voice in how a company is run.

Executive and Agency Action - SEC

- **Strengthen the SEC whistleblower program** by fully protecting whistleblower identities and reducing hurdles to providing whistleblower information. Withdraw or roll back SEC rule limiting whistleblower protections
- **Ensure clarity that fiduciaries must consider ESG factors** in making investment decisions.

Rulemaking - SEC

- **Revise rules governing stock buybacks** to sharply restrict when they are permitted and when they are assumed to be market manipulation.
- Implement Dodd-Frank requirements for public companies to **claw back excessive incentive-based compensation** that resulted from earnings or other benchmarks that were later restated

- **Protect shareholder voice in governance** by rolling back Trump regulations limiting resubmission of shareholder proposals
- **Roll back Trump rules that require proxy advisors to let subject companies review their advice in advance** and that require proxy advisors to communicate additional material from an issuer to their clients. These requirements limit a proxy advisors' ability to provide unbiased advice to clients.
- **Update mutual fund naming rules to define "ESG," "sustainable,"** etc. and require funds that call themselves ESG to adhere to the standards in the definition. To start with, funds that use these labels should be required to disclose how their investment and engagement strategies align with this label. In the medium to long-term, definitions of sustainable investments should be geared toward the attainment of climate change mitigation goals.
- **Create and mandate a standardized ESG disclosure framework** that reflects this definition, allowing investors to track how different companies and funds are performing on ESG metrics.

<u>Rulemaking - DOL</u>

- **Roll back DOL rule on ESG integration by ERISA plans** and clarify that ERISA fiduciaries have an obligation to integrate material ESG factors in their investment actions
- If finalized, **roll back proposed DOL rules governing proxy voting by ERISA plans** that undermine ESG integration
- Include **a sustainable investment policy as one of the requirements for an investment fiduciary** to discharge its duties. Lay out key principles for what this policy must include to meet the fiduciary standard.

<u>Legislation</u>

- **Limit and regulate stock buybacks** by ending the ability of companies to do stock buybacks on the open market and limiting their ability to use debt to finance buybacks or dividends.
- **Require supermajority board and shareholder approval for political spending** by company to ensure that political spending truly reflects corporate interests and not just interests of CEO and top-level management.
- Mandate a minimum percentage of **employee representatives on boards** for corporations above a certain size threshold

Protect individual investors in financial markets by making sure that they can choose safe, sustainable investments based on advice that is truly in their best interests.

In the era of defined contribution retirement savings, it is crucial that investors can know where to get trustworthy and reliable financial advice. The SEC and DOL must ensure that all those who present themselves as trustworthy providers of financial advice are required to put investor interest first and are free of conflicts of interest. These rules will stop unscrupulous advisers from taking advantage of investors by charging them excessive fees or guiding them to investments that financially benefit the adviser. Conflicted advice takes billions of dollars a year out of the pockets of middle-class investors and transfers it to Wall Street, undermining retirement security and savings for opportunities like education or starting a business.

Rulemaking - SEC

- **Write an effective new 'best interest' standard.** The SEC's current "Regulation Best Interest" does not actually require those providing investment advice to put their clients' interest first. New rules or guidance should make clear that advisors are required to recommend investments and investment strategies that are the best match for investors, and avoid compensation structures that incentivize advice that is not in the investor's best interest.

Rulemaking - DOL

- **Revive the DOL Fiduciary Rule in a form similar to what the Obama administration promulgated**. Complementing the legislation above defining who is a fiduciary, this rule should define what the responsibilities of a fiduciary are. These should track the Obama era requirements for ERISA fiduciaries to act in the best interests of plans and plan participants, without regard to their own interests or the interests of their firm.

Legislation

- **Amend the Employee Retirement Income Security Act (ERISA) to eliminate loopholes in the definition of fiduciary investment advice**. This will clarify the Department of Labor's authority to define certain advisors as fiduciaries, including with regard to rollover recommendations. That authority was called into question by a faulty appellate court decision overturning the Obama-era Fiduciary Rule.

<u>Improve regulation of derivatives markets by limiting speculation, ensuring transparency, and controlling the systemic risk that these markets pose to the stability of the broader financial system</u>

The 2008 financial crisis demonstrated that the growth of unregulated markets in complex derivatives posed major risks to the real economy. Dodd-Frank greatly increased the authority of the CFTC and SEC to regulate these markets. While progress has been made, industry lobbying has resulted in a situation where derivatives rules are shot through with loopholes and protections are far weaker than they should be. Significant additional work is needed to make markets for complex derivatives truly transparent and secure. Such reforms will limit the harm that speculative derivatives trading can impose on the real economy, and make sure that losses are borne by those who incur them.

<u>Rulemaking - CFTC</u>

- **Strengthen cross-border swaps regulation** to apply US registration, clearing and margin requirements to all subsidiaries of US BHC's and other cases where a US person would have exposure to derivatives contracts abroad. Require covered participants to clear through Derivatives Clearing Organizations and Futures Commissions Merchants subject to US law. Roll back recent cross-border regulations that provide a road map for evading U.S. rules.
- **Require all standardized swaps to trade on exchanges in a transparent manner** by limiting packaged transactions exempted from exchange trading requirements and closing other loopholes in "Made Available to Trade" rules. Eliminate inappropriate exemptions to execution transparency requirements for those derivatives currently required to trade on exchanges/swaps execution facilities.
- **Revisit capital requirements for dealers and participants in derivatives markets** to ensure the requirements are adequate and that definitions of common equity cover the appropriate assets.
- **Improve clearinghouse regulation to limit current risks of "too big to fail" clearinghouses** with margin requirements that are too low in good times. Ensure margin and guarantee funds are adequate by standardizing models, eliminating discretion in waterfall rules and requiring pre-funding of the waterfall. Align incentives by requiring the clearinghouses to pre-fund a portion of the losses in the waterfall to ensure they have adequate "skin in the game."
- **Impose meaningful position limits** on speculators in commodity markets to prevent rampant speculation that distorts prices in critical commodities, including by regulating commodity index funds that provide exposure to those markets. Revisit recently finalized position limit rules that delegate critical regulatory decisions to for-profit

exchanges that face enormous conflicts of interest and eliminate inappropriate exemptions and loopholes in those rules.

- Implement comprehensive regulations that **govern the risks posed by electronic and automated trading**. Regulations should ban systemic exploitation of order types that allow favored traders to trade on information unavailable to the broader market and profit at the expense of other market participants.
- **Create a registration regime for electronic trading firms** that includes books and records requirement disclosing what firms hold and how long they hold it, with ability to make data publicly available. This will help inform future regulation by providing a better picture of the risks associated with electronic trading.

Rulemaking – SEC

- **Roll back SEC rules that basically exempt cross-border transactions in security-based swaps from U.S. regulation.** Both the SEC and CFTC must substantially improve their regime for oversight of cross-border swaps.
- **Complete the Dodd-Frank framework for oversight of derivatives trading, clearing, and margining.** The SEC lags the CFTC in completing the core framework in this area.

Legislation

- **Limit the CFTC's authority to exempt firms that it regulates** from the substantive requirements of Title VII of Dodd-Frank, including by strengthening requirements for oversight of cross-border transactions.
- **Require minimum floors for derivatives risk controls**. This will prevent subsequent administrations from unilaterally deregulating derivatives markets.

Change the tax code and reinvigorate the IRS to focus on making the wealthy pay their fair share and reducing incentives for financial engineering

Today's tax code creates incentives for the wealthy to financialize the economy in order to avoid paying their fair share. Meanwhile, predatory behavior by financial institutions has measurably redirected wealth to those already at the top. The fact that this wealth is undertaxed further increases inequality and reinforces excessive incentives for unproductive financial engineering. This planned reduction in tax receipts is then used as an excuse for why the United States cannot "afford" a robust safety net. The IRS and Congress should take action to fully tax Wall Street wealth and pay for programs that reduce inequality and provide social benefits. They should also take steps to eliminate tax code provisions that encourage financial engineering, which will help rebalance the economy in favor of productive investments.

Executive and Agency Action - IRS

- **Increased IRS enforcement** against the super-wealthy and large corporations. Select audit targets based on proportion of income earned (all income, not just taxable). Reduce the focus on EITC and other low-income taxpayer issues and increase funding for enforcement litigation.

Legislation

- **Levy an annual wealth tax to break up the concentration of wealth** among the wealthiest few and reduce incentives for otherwise increasing concentrated wealth.
- **Roll back the 2017 Trump corporate tax cuts**. Large banks are a classic example of big companies that benefited from these tax cuts and that have engineered their operations to further take advantage of loopholes that they created. Savings from these tax cuts have repeatedly been used to repurchase stock or pay dividends rather than invest in research and development or pay and benefits for workers.
- **For wealthy taxpayers, require the recognition of all net gains upon death or impose annual mark-to-market taxation.** Under current law, gains are generally not taxed until assets are sold, and built in gains are effectively eliminated at death. This allows taxpayers to delay paying the capital gains tax or avoid it entirely. This problem will be more significant if the capital gains tax rate is increased. Requiring gain recognition at death or mark-to-market taxation is necessary to ensure that the capital gains tax rate increase leads to higher government revenues.
- **End special tax treatment of long-term capital gains**. Eliminate a disparity that encourages converting income into capital gains in ways that distort the operation of the economy, such as private fund's use of carried interest.

  - At a minimum, close the carried interest loophole, as discussed above in the Stop Wall Street Looting Act.
- Levy a **financial transactions tax / Wall Street sales tax**, a small, targeted tax on transfer of assets, to increase incentive for long-term holding of assets and limit high frequency trading and other low-value activities. Design the tax to limit the ability of funds to shift their transactions to avoid paying the tax.
- **End Opportunity Zone Tax Break for Real Estate Titans.** Eliminate the Opportunity Zone tax break that gives tax breaks to big developers and Wall Street real estate interests, and incentivizes development that benefits the wealthy while displacing people of color and lower-income people.

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Create and encourage a true "public option" alternative to Wall Street finance

Even when Wall Street predatory practices can be better controlled, private investment for profit will not fully serve critical public needs. We need institutions that make retail banking services available regardless of income. In investment markets, new institutions are needed that make patient capital available for long-term, high road growth strategies -- including investments in developing a low carbon economy, addressing systemic discrimination and racial inequality, and creating robust infrastructure and industrial development in every region to enable opportunity. These should be delivered via new public institutions that can provide alternatives for investment and financial services that prioritize public needs.

Executive and Agency Action - Federal Reserve

- **Accelerate implementation of "Fednow" payments system** to enable a fast, privacy respecting public option for bank settlement of payments in real time that includes robust protection against payments fraud.
- **Create a central bank digital currency with wallets or accounts open to the public**. Currently the Federal Reserve provides secure accounts and digital currency services only to banks and selected large financial institutions. These basic financial services should be made broadly available to individuals and businesses in a manner that is affordable and respects privacy rights.

Executive and Agency Action – Other Banking Agencies

- **Change rules for banking licenses and deposit insurance to support and encourage state and local public banks.** Current rules on bank supervision and deposit insurance unfairly discourage and discriminate against banks that are owned by state and local public entities. This should be changed to encourage responsible state and local public banks committed to public interest goals.

Legislation

- **Ensure financial inclusion of white, Black, and brown Americans by providing affordable public access to a suite of crucial financial services**. This could be done by creating a central bank digital currency with generally available Federal Reserve accounts/wallets. The system providing these services should charge affordable fees for the services, and be broadly available regardless of geography. It should help redirect Americans away from predatory providers of lending and cash advance products. If the Federal Reserve does not do this on their own, then Congress should legislate the effort.

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- **Mobilize post offices as convenient bank branches**, whether as part of a direct postal banking system in partnership with the U.S. Treasury, or as an access point for services provided through the Federal Reserve viaFedAccounts. Either system should allow for a no-fee transfer of government benefit payments like Social Security, as well as more effective distribution of Coronavirus stimulus checks and other similar payments.
- **Establish a Federal Public Investment Bank to help guide, coordinate, and finance public investment efforts –** Such a bank should have a significant public equity base and a mandate to create a national public investment strategy to guide use of that equity. The bank should have a strong democratic governance and oversight structure and a requirement to make investments that contribute to equitable, inclusive and sustainable economic growth, improvement of national productive capacity, racial justice, transition to a low-carbon economy, regional and local development, and technology development.
- **Help cities and states to create public banks to boost the local economy**, lend counter-cyclically to blunt the impact of Wall Street booms and busts, and save municipalities and states millions in fees to Wall Street banks. Many cities and states stand ready to create public banking entities on a decentralized basis even if the Federal government does not act to do so. The Federal government should support their efforts.

<u>Improve the functioning of regulatory agencies by ensuring they are adequately funded and increasing Congressional oversight to monitor their performance and ensure they are pursuing their mandates</u>

Too often, major financial institutions have evaded responsibility and meaningful accountability for the damage they have done to investors, the public, and the economy. Tools for both regulators and individual members of the public to pursue wrongdoing legally must be improved, and regulators must effectively use the tools they have.

<u>Executive and Agency Action - SEC and CFTC</u>

- **Stop waiving bad actor bars and other legal penalties** after findings of wrongdoing that would, without the waiver, prevent companies from participating in certain markets, taking advantage of certain regulatory waivers, or providing investment advisory services for some funds.

<u>Legislation</u>

- **Increase funding for the SEC and CFTC** to allow both agencies to better address the increase in regulatory responsibilities that they have seen since the implementation of Dodd-Frank and that would continue to grow with these proposals.
  - The SEC and CFTC would ideally have countercyclical enforcement budgets and be allowed to fund themselves from enforcement and user fees. At the SEC, these fees can bring in substantial excess revenue.
- **Increase funding for the IRS** to roll back years of attacks by Republicans seeking to weaken tax enforcement. Academic studies show that funding more enforcement activity will pay for itself by reducing the ability of the wealthy to avoid paying taxes
- **Strengthen congressional oversight of all agencies to ensure they are complying with statutory requirements and pursuing their mission.** Congress needs to identify where agencies are failing to promulgate or enforce rules and hold agency leadership accountable.

Expand access to justice for consumers, workers, investors, and advocates to protect existing avenues for vindicating their rights and create new tools where the existing ones are insufficient.

Americans who are harmed by big corporations like banks or private funds deserve an opportunity to meaningfully vindicate their rights. We need to make sure that access to justice is not restricted by the size of a claim, the cost of bringing a lawsuit or a take it or leave it contract provision buried in the fine print.

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<u>Legislation</u>

- **Amend the Federal Arbitration Act** to prohibit forced arbitration and bans on consumer, worker or investor class action suits.
- **Create a federal citizen suit provision** permitting individuals to bring suit on behalf of the federal government in circumstances where the federal government could collect a civil penalty. Entitle prevailing plaintiffs to 50 percent of any civil penalty awarded.
- **Codify findings of noneconomic harm for statutory violations** to expand standing to cases where the current standing jurisprudence may not support a finding of a concrete injury-in-fact
- **Expand federal fee shifting statutes to incorporate the "catalyst" theory** authorizing a grant of fees when a lawsuit achieves the desired result by prompting the defendant to change its conduct
- **Restrict the breadth of protective orders** by barring them in the absence of a specific need for confidentiality of specific documents covered. This will increase the amount of information available to the public and may catalyze regulatory action.

<u>Respond to the risks posed by the dramatic expansion of data collection by big tech firms and at the intersection of big data and financial services</u>

We need new legislation and regulation to deal with intrusive data collection practices, to protect individual privacy rights, and to ban discriminatory or abusive uses of big data. These must effectively ban intrusive data collection by big tech or financial services providers, rather than simply permitting such data collection with customer opt-in. To combat these abuses, Congress should pass and implement the Data Accountability and Transparency Act of 2020. (These issues will be discussed further in the consumer finance memo)

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Glossary of Terms

BHC	Bank Holding Company
CFTC	Commodities Futures Trading Commission
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
DOL	Department of Labor
ESG	Environmental, Social and Governance
FDIC	Federal Deposit Insurance Corporation
Federal Banking Regulators	FDIC, Federal Reserve and OCC
Federal Reserve	Federal Reserve Board of Governors
FSOC	Financial Stability Oversight Council
FTC	Federal Trade Commission
HSR Act	Hart Scott Rodino Act
ILC	Industrial Loan Corporation
OCC	Office of the Comptroller of the Currency
PIB	Public Investment Bank
SEC	Securities and Exchange Commission
SWSLA	Stop Wall Street Looting Act
WARN Act	Worker Adjustment and Retraining Notification Act