**Written Testimony of**

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**Committee on Financial Services**

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**Dodd-Frank Turns 15: Lessons Learned and the Road Ahead**
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Chairman Hill, Ranking Member Waters, and distinguished members of the Committee, thank you for the opportunity to testify today on the Dodd-Frank Act, now fifteen years since its original passage. My name is Ken Bentsen, and I am the President and CEO of the Securities Industry and Financial Markets Association (SIFMA).

The U.S. securities markets are the deepest and most liquid in the world. They are also the envy of the world. In the U.S., seventy-five percent of commercial activity is financed through our capital markets, significantly more than in other developed economies. In fact, I spent the last week in Europe meeting with UK and EU financial institutions and policy makers where both jurisdictions have prioritized the development of their capital markets to spur investment and economic growth like that we have here at home. Vibrant and healthy capital markets allow companies to invest in plant and equipment, spurring job creation and economic growth. Corporations, farmers, ranchers, investors, and governments utilize our capital markets to raise capital and credit and manage all types of risks. Our mortgage-backed securities market allows families to lock in a mortgage rate before buying a home. Cities, states and non-profits fund infrastructure projects, schools, and hospitals through the municipal bond market. The U.S. government funds daily operations through the Treasury market. And American workers prepare for their retirement, directly and through investment vehicles such as 401k retirement accounts, IRAs and pension funds, providing the investment capital that fuels our economy. Again, if you look around the world, virtually every other nation looks to our robust market and investment system as a model for economic development and growth. Therefore, it is critical that our policymakers tailor regulation not just to ensure transparency, protect investors, maintain fair and orderly markets and mitigate legitimate market risks, but to do so without unnecessarily disrupting or constraining the role capital markets play in fostering economic growth. Further, Congress has an important role to play beyond simply enacting the laws; it is important for Congress to periodically review previously enacted statutes to determine effectiveness, adherence to legislative intent, and impact on the markets. So I commend the Committee for holding this hearing.

Beyond question, our markets and related participants are among the most regulated sectors in the U.S. economy. Many regulations that affect the financial sector are essential to ensure fair and orderly markets, safety and soundness of the financial system, and protect investors, issuers, depositors, and consumers. But they are not without cost.

The post-2008 financial crisis regulatory and supervisory reforms, as culminated in the Dodd-Frank Act ("DFA," or "Dodd-Frank"), were the most expansive financial regulatory actions since the 1930's, then in response to the Great Depression. The Act, comprised of sixteen titles and resulting in approximately 400 rulemakings, significantly expanded the number, breadth and intensity of regulatory and supervisory requirements to which the U.S. financial sector is subject. Many of the policies required by Dodd-Frank or promoted in the aftermath of the financial crisis have made the U.S. financial system stronger and more resilient today than it was before 2010.

These changes have significantly decreased the probability that a major banking organization would fail during an extreme shock, and if so, reduced the potential contagion and cost if such a failure were to occur. In particular, U.S. banking organizations have materially more and higher quality capital today than pre-crisis, which provides them a larger buffer against failure if they experience unexpected losses. The rules also require such firms to depend less on "runnable" funding and instead maintain larger holdings of liquid assets to help them endure short-term market distress. And, encapsulated in Title II of the Act are extensive mechanisms to wind down a failing institution and mitigate exposure to the broader system and ultimately taxpayers.

The largest and most complex banking organizations, the so-called GSIBs and systemically important banks:

- Have more than two times Common Equity Tier 1 capital as a percentage of risk-weighted assets and over three times in total dollar amount compared with 2007;[1]

- Have increased their liquidity resiliency, now holding more than twelve times the number of high-quality liquid assets relative to 2007;

- Have substantially decreased their reliance on short-term wholesale funding; and

- Have six times as much properly structured usable total loss-absorbing capacity, or TLAC, which consists of equity and long-term debt that, in the event that significant buffers against failure were inadequate, could be used to absorb the top-tier parent's losses and recapitalize its material subsidiaries without the need to taxpayer-funded bailouts and helping to prevent contagion throughout the financial system.

Furthermore, the Federal Reserve's CCAR stress test imposes dramatically higher *de facto* capital requirements on certain asset classes, notably securitized small business loans and residential mortgages, than would otherwise be prescribed by the capital rules.

[1] https://www.pwc.com/us/en/industries/financial-services/library/basel-iii-and-banking.html

OTC derivatives markets have become much resilient through enhanced transparency, mandatory central clearing for standardized OTC derivatives, margin requirements for non-cleared derivatives and registration and regulation of key market participants. Swaps and security-based swaps are now reported to trade repositories. The majority of the notional volume of interest rate swaps and index credit default swaps are centrally cleared and traded on CFTC-registered swap execution facilities ("SEFs"). Non-cleared swaps are secured by adequate margin, preventing the buildup of unsecured exposure over time and thereby significantly mitigating systemic risk.

For retail investors, Section 913 of Dodd-Frank led to SEC Regulation Best Interest, which establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer relating to any securities transaction or investment strategy involving securities. This provision and the ensuing rule Reg BI were the result of extensive Congressional negotiation and SEC studies over more than a decade. Our members supported the effort and final product promulgated under then SEC Chairman Jay Clayton as it hewed closely to the text and intent of the statute to level the standard of care that brokers and advisers owe toward clients when preserving investor choice.

Since the financial crisis, the cumulative effect of stress testing, higher capital and liquidity, resolution and recovery planning, the regulation of OTC derivatives markets and various other reforms has led to the financial system becoming significantly more resilient and stable. The resilience of our financial institutions has borne out not only in theoretical stress tests but also in the crucible imposed by the COVID pandemic, during which economic activity ground to a halt and financial markets were stretched to unimaginable limits. While markets around the world, including in the US, seized up in the initial period following the nationwide shutdown of normal civilian activity in response to a global public health crisis, they recovered rapidly. And yes, while there was significant government intervention to provide a backstop, as was appropriate given a government-imposed shutdown of normal economic activity in response to the public health crisis, most of that intervention was not actually drawn and instead served to restore confidence. Importantly, US markets recovered quite rapidly and, in fact, provided the opportunity for corporates to access long term debt markets, repair balance sheets, and provide investment that resulted in the US economy recovering more quickly. Notably, during this period, no banks failed. And from an operations perspective, firms were able to pivot to remote locations and maintain normal market operations from afar. Importantly, in the US, and pretty much everywhere across the globe, financial markets remained open and operating. As the CEO of a member firm commented, "we went from ten trading desks to 1000 trading desks in a day." This is something of which US policy makers and all Americans should be proud.

Though many of the Dodd-Frank reforms have made the U.S. financial system more resilient and less prone to shocks, they are not without cost, and we believe that appropriately tailored regulation should balance the dual goals of enhancing financial stability and investor protection while supporting the flow of investment capital to end-users who deploy that capital to create jobs and grow the economy. Investment and growth are relative to risk, and while policy makers should endeavor to mitigate and manage risk, eliminating risk is not only impossible, but also would undermine our economic system.

SIFMA believes certain modifications to Dodd-Frank and post crisis reforms are appropriate to ensure that the U.S. financial system optimizes its potential to help fuel economic growth and job creation. This doesn't need to be an either/or matter. The financial sector can continue to be well-regulated, well capitalized and resilient even with a recalibration of certain unnecessarily burdensome regulations, including numerous related to the Dodd-Frank Act. If banking organizations were permitted to unlock more of their capital and liquidity, additional lending and financing to consumers and businesses would provide for greater levels of economic expansion. Policymakers need to seek the appropriate balance, yet unfortunately, what we have seen is that the outcome is not always appropriately calibrated.

Increased capital and liquidity requirements and, in particular, recent proposals to increase those requirements under the so-called Basel III Endgame, as required by Dodd-Frank, have and will result in the tightening of bank's ability to deploy capital for lending and financing at the level to support optimal growth potential of the nation's economy. This is not just about the ability for banks to lend. Large U.S. bank affiliated broker-dealers comprise significant market share of the nation's securities and derivatives markets and, when combined with foreign bank dealer counterparts also active in the U.S. market, account for upwards of 90% of market share for traditional securities products such as equities, bonds, securitizations and derivatives. Restraining the ability of such firms to deploy capital to engage in these markets will have a direct effect on counterparties who rely on market financing and risk mitigation. While the U.S. continues to host the deepest and most liquid bond markets that are the envy of the world, such markets have become significantly less liquid in recent years, as bank affiliated dealers have been forced to reduce inventories as a result of DFA capital and market structure rules. While policymakers have sought to recalibrate some of these rules, as they did with Volcker in recent years, the proposed Basel III capital and liquidity rules will have the result of exacerbating this situation.

This is not just about banks. Non-bank affiliated and regional broker-dealers and asset managers, all subject to robust rules and oversight by federal markets regulators, have been subject to enhanced regulatory and compliance scrutiny and burden. The cost of compliance with the panoply of new rules has increased compliance costs for banking organizations, according to one study, by over $50 billion annually.[2] Many of our smaller broker-dealer member firms have felt the need to merge due to increased compliance costs as a percentage of total revenues. Over the last fifteen years, the number of registered broker-dealers has declined by 30% while total assets have increased from $4.7T to $6.4T.[3] Further, some regulators have interpreted certain provisions of the act as a license to establish new rules outside of the original intent of the statute notwithstanding the lack of any obvious market failure. Partly as a result of increased regulatory obligations resulting from Dodd-Frank, some financial activity has shifted in the past decade to more lightly regulated providers. One

[2] Thomas L. Hogan and Scott Burns, "Has Dodd-Frank affected bank expenses?" *Journal of Regulatory Economics* (2019).
[3] https://www.sec.gov/files/dera-broker-dealer-activity-2506.pdf

asset class where this shift is particularly pronounced is mortgage origination and servicing. As noted in the 2022 FSOC Annual Report, non-banks originate approximately two-thirds of new mortgage originations, a nearly 27 percent increase since 2017. Non-bank servicing has increased from 11 percent of the market in 2011 to 55 percent in 2022. This shift, augured by the litany of Dodd-Frank prescriptions, could have profound implications for safety and soundness.

SIFMA believes it is time for a thoughtful assessment of where that balance between regulation and capital formation should be drawn. Despite fifteen years of demonstrated resilience through stress testing and real-world disruptions, financial regulators have repeatedly promulgated regulations without balancing the costs to job creation and economic growth against the problem sought to be remedied, and in some cases deemed remote risks to be justifications for major costs and market frictions associated with new rules.

Below is a discussion of various Dodd-Frank prescriptions which we believe are appropriate for review and revision.

**Prudential Regulation**

Bank capital and liquidity requirements have material impacts across the entire economy, affecting the ability of corporations, small businesses, governmental organizations, and consumers to fund their activities and manage all types of risks. The enhanced prudential standards pursuant to Title I of DFA, including enhanced capital and liquidity requirements inclusive of stress testing, and resolution plan requirements have contributed to strengthening the U.S. banking sector and making it significantly more resilient against material distress. However, many components of the standards have "gold-plated" the Basel international standards and promulgate repetitive and overlapping capital and liquidity requirements for same risks – resulting in excessive capital and liquidity requirements which create strong disincentive for large banks to engage in capital markets related activities, thereby constraining the availability and cost of capital for job creators and investors. It is crucial that policymakers, including Congress, conduct sufficient analysis and oversight to ensure that enhanced prudential standards strike the appropriate balance between ensuring financial stability and macroeconomic growth. It is particularly important that policymakers address the repetition and overlaps in the prudential standards that unnecessarily adversely affect the ability of large banking organizations to act as intermediaries in our capital markets, given that those markets fund roughly three quarters of all economic activity in the United States.

In particular, SIFMA has expressed deep concern about the Basel III Endgame proposal that was issued in 2023 by the banking regulators, not only because it would significantly increase aggregate U.S. bank capital levels well beyond their current, historically robust levels without any clear justification, but because it inappropriately, or perhaps unwittingly, targets banking organizations' capital markets activities for some of the largest increases.[4] These impacts are, in turn, greatly

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[4] For additional background on the industry quantitative impact study analysis and SIFMA's response to the original Basel III Endgame re-proposal, see SIFMA, ISDA Comments on the Market Risk Components, January 16, 2024. Available at: https://www.sifma.org/wpcontent/uploads/2024/01/ISDA-SIFMA-Comment-Letter-January-16-2024-Basel-III-Endgame.pdf. See also SIFMA, FIA Comments on the Operational Risk Components, January 16, 2024.

exacerbated by the overlaps between these frameworks and the Federal Reserve's stress testing regime.

Enhanced Capital and Liquidity Requirements

At present, large banking organizations are bound by a complex web of capital and liquidity regulations, including up to 19 separate capital requirements[5] and 5 separate liquidity requirements.[6] Many of these requirements have gone materially above and beyond the Basel international standards due to U.S. specific "gold-platings" and resulted in many repetitive and overlapping capital and liquidity requirements for same risks,[7] a trend that continues, as evidenced in the U.S. Basel III Endgame proposal issued in 2023. In addition, the conceptual designs of various requirements lack inherent consistency and sometimes even contradictory to each other and market practice leading to excessive capital requirements.

1. *Supervisory stress tests and capital markets related activities*. The post-crisis financial reforms, e.g., the Volcker rule, mandatory margining, and mandatory clearing, have had their intended effect. Banks can no longer take the types of directional risks that resulted in significant losses during the 2008 financial crisis. Moreover, trading revenue has now become a source of strength in stress, which in turn allows banks to be a source of strength to the capital markets in periods of stress, including during the COVID pandemic and various geopolitical disruptions. However, the supervisory stress testing framework has not kept pace. The global market shock ("GMS") component and the supervisory models continue to assume banks suffer severe losses in stress when the opposite is true. As a result, capital markets, the engine of U.S. economic exceptionalism, are steadily losing market liquidity and dynamism.

2. *Supervisory stress tests and securitization markets*. The comprehensive post-crisis reforms focusing on securitization markets include risk retention, enhanced underwriting standards, enhanced disclosures, stress testing, as well as capital requirements. These reforms strengthened the quality of loans and improved credit enhancement in securitization structures. However, stressed shocks today in the global market shock component are nearly identical to pre-crisis shocks (AAA notes shocked at ~25%), effectively ignoring post-crisis reform. SIFMA estimated that 15% of the new securitization issuances in 2023 would result in capital exceeding max loss under the current capital framework, which will only get worse under the

Available at: https://www.sifma.org/wp-content/uploads/2024/01/SIFMA-FIA-Op-RiskComment-Letter-Final-1.16.2024.pdf. More information can also be found in SIFMA's Blog Series on the Basel III Endgame, available at: https://www.sifma.org/resources/news/basel-iii-endgame-blog-series/

[5] I.e., 10 minimum risk-based capital ratios and buffers including stress capital buffer—result of DFA supervisory stress test, 3 minimum leverage ratios and buffer, and 6 total loss absorbing capacity/long-term debt minimum ratios and buffers. https://www.sifma.org/resources/news/blog/understanding-the-current-regulatory-capital-requirements-applicable-to-us-banks/

[6] I.e., liquidity coverage ratio (LCR), net stable funding ratio, internal liquidity stress tests (ILST), ongoing liquidity horizontal reviews, and resolution liquidity adequacy and positioning (RLAP) and resolution liquidity execution need requirements.

[7] E.g., the global market shock component overlaps with market risk capital framework, and RLAP is materially similar to LCR and ILST.

Basel III Endgame proposal – disincentivizing large banks from engaging securitization markets. In the last decade, banks have had to pull back resulting in less liquidity in securitization markets and higher costs to homebuyers.

3. *Enhanced Capital and Liquidity Requirements and U.S. Treasury markets*. To incentivize central clearing of U.S. Treasury securities and repos, certain central clearing houses are providing and expanding cross-margining arrangements. However, the current capital rules not only prohibit banks from recognizing risk-reducing benefits of cross-margining arrangements but instead result in materially higher capital requirements—disincentivizing large banks from facilitating Treasury clearing.[8]

4. *Collins Amendment*. The Collins Amendment was designed to ensure that capital requirements calculated using modeled approaches for large banks would not fall below levels set using standardized calculations set by regulators in 2010. Given that the post-crisis financial reforms have dramatically increased capital requirements for these banks and that a minimum floor is already included in the Basel III Endgame standards, the Collins Amendment should be reexamined and reformed. At a minimum, we recommend that U.S. Treasuries and central bank reserves be exempted from the Collins Amendment's floor on leverage calculations.

In aggregate, these requirements have inhibited the ability of banking organizations to support the U.S. capital markets, the U.S. Treasury markets, as well as the broader economy, and have pushed a significant amount of activity to more lightly regulated parts of the financial ecosystem. Proposed risk-based capital reforms, such as those envisioned by the 2023 Basel III Endgame proposal, could also negatively impact the securitization markets, which serve to lower borrowing costs for a wide variety of consumer and business loans, as well as inhibit the ability of corporations to prudently manage their business risks.

<u>Tailoring</u>

One-size-fits-all regulation has led to a significant decline in foreign banking organization ("FBO") activity in the United States and has impeded the ability of regional institutions to support the capital markets. More needs to be done to conform with both the spirit and letter of the 2018 tailoring law, the *Emerging Growth, Regulatory Relief, and Consumer Protection Act*,[9] ensuring that enhanced prudential standards, including capital, stress testing, liquidity, and resolution planning requirements are proportionate to the size and risks posed by the U.S. operations of FBOs and regional banks, and that such requirements do not unduly penalize the important role that these institutions play in supporting the U.S. capital markets and American companies. At a minimum, regulators should index the regulatory thresholds in the banking regulators' 2019 tailoring rule for GDP, to align the regulatory framework with the current market environment and eliminate regulatory cliff effects by

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[8] https://www.isda.org/a/B4YgE/Cross-product-Netting-Under-the-US-Regulatory-Capital-Framework.pdf
[9] Public Law 115-174.

adopting transition or phase in periods for heightened regulatory requirements. The regulatory framework should also account for the home country regulation of internationally headquartered banks, including all capital, liquidity, stress testing, and resolution requirements applicable to the parent holding company.

## Capital Markets Regulation

### Securities Lending Reporting/SEC Rule 10c-1a

Section 984(a) of Dodd-Frank gives the SEC authority to develop a transparency regime for the securities lending market. The securities lending market is part of the necessary "plumbing" that contributes to the healthy functioning of the U.S. securities markets. Securities lending improves global market liquidity and facilitates asset redistribution in financial markets by supporting global capital market activities and helping to ensure prompt settlement of trades. Securities lending also supports the orderly operation of capital markets by, among other things, enabling the establishment of short positions and thereby facilitating price discovery and hedging activities.

In October 2023, the SEC adopted Exchange Act Rule 10c-1a pursuant to this provision, imposing extensive and granular reporting and public disclosure requirements regarding securities loans. The reporting and disclosure regime goes beyond the authority provided in the Dodd-Frank Act, capturing arrangements outside of traditional securities lending arrangements and requiring public disclosure of detailed information on individual securities loans on a slightly delayed basis. The rule is currently being challenged in court. Subject to the outcome of the litigation, SIFMA believes the rule should be revised to clearly limit its scope to traditional securities lending arrangements and to otherwise coordinate any public disclosure under the rule with the short reporting rule, Rule 13f-2, to ensure proper protection for market participants engaging in short selling strategies.

### Short Reporting/SEC Rule 13f-2

Section 929X of Dodd-Frank gives the SEC authority to prescribe rules to make certain short sale data publicly available no less frequently than monthly. The SEC has long recognized that short selling provides the market with important benefits, including the following: (i) market liquidity is often provided through short selling by market professionals, such as market makers and block positioners, that offset temporary imbalances in the buying and selling interest for securities; (ii) short sales effected in the market add to the selling interest of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary imbalance between buying and selling interest; and (iii) short selling can contribute to the pricing efficiency of the equities markets, i.e., market participants that believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Short selling, whether via individual securities, basket constituents, or derivatives (e.g., futures, swaps, options) is also a necessary component of prudent risk management.

In October 2023, the SEC adopted Exchange Act Rule 13f-2 to implement Section 929X. The reporting and disclosure regime goes beyond the authority provided in the Dodd-Frank Act, imposing extensive and granular reporting requirements on market participants regarding their short selling activity and establishing an extensive public monthly short position reporting regime. The rule is currently being challenged in court. Subject to the outcome of the litigation, SIFMA believes the rule should be revised to significantly scale back the granular reporting obligations and to otherwise coordinate the rule with the securities lending reporting rule, Rule 10c-1a.

SRO Fee Filings/Exchange Act Section 19(b)

The Dodd-Frank Act significantly changed the process governing fee filings by the national securities exchanges and FINRA (i.e., the self-regulatory organizations ("SROs")). Prior to the changes made by the Dodd-Frank Act, SRO fee filings for market data and other products in which the SROs imposed fees on non-members were subject to public notice and comment and SEC approval before they became effective. Under the changes made by the Act, these fee filings are now immediately effective and essentially unchallengeable by market participants if the SEC does not suspend them within 60 days of filing. This has allowed the SROs to impose excessive fees on market participants and the public and to otherwise abuse the fee filing process. SIFMA believes this should be addressed by amending Exchange Act Section 19(b) to change the process back to the way it operated prior to the Dodd-Frank Act.

Municipal Advisor Regulation

The SEC's Municipal Advisor Rule was mandated by Section 975 of the Dodd-Frank Act, which became effective on July 1, 2014. Prior to Dodd-Frank, municipal advisors (consultants who advise state and local governments on bond issuance, use of derivatives and other related financial matters) were wholly unregulated. These independent, non-dealer municipal advisors were engaging in the business of advising municipal issuers without having taken any qualification test or professional examination; disclosed their backgrounds as registered representatives; been subject to restrictions on political contributions and gifts to issuer officials that would otherwise be prohibited for brokers, dealers and municipal securities dealers under the Municipal Securities Rulemaking Board's rules; and been held to prohibitions on using political consultants.

While Dodd-Frank sought to address this regulatory gap, the SEC proposed and implemented its rule that went far beyond the scope and authority Congress had intended, creating an unduly burdensome regulatory regime particularly for those broker dealers that were already regulated.

Bipartisan bills introduced in the 112$^{th}$ and 113$^{th}$ Congresses sought to clarify and simplify the scope of municipal advisor regulations under Dodd-Frank by mandating that any party explicitly engaged to serve as a municipal advisor would be subject to a fiduciary duty, regardless of whether they are a financial advisor, broker-dealer, bank or other type of entity. SIFMA believes that similar legislation should be considered to clarify and simplify the scope of municipal advisor regulations, which could reduce regulatory burdens and transaction costs without reducing protections for municipal securities issuers.

**Derivatives Regulation**

As discussed above, Title VII of Dodd-Frank directed regulators to enact reforms that have enhanced transparency and resiliency and mitigated risks in the OTC derivatives market. The implementation of Title VII, however, has also created unduly complex and costly rules that have impeded access to global and regional markets, reduced end-user access to funding and liquidity, and impaired efficient risk management. Addressing certain of these issues could help promote job creation, economic growth and U.S. competitiveness, without undercutting Title VII's transparency and risk mitigation benefits.

<u>Cross-Border Framework</u>

Despite global consensus for global regulators to coordinate on Title VII rules, including an express mandate for U.S. regulators in DFA, global regulators pursued differing approaches to derivatives regulation in the wake of the financial crisis. Insufficient coordination caused various adverse impacts to derivatives markets, which was exacerbated by the U.S. regulators' decision to apply their rules extraterritorially. Title VII limited extraterritorial application of Dodd-Frank rules to only those instances where non-U.S. activities present a direct and significant risk to the United States. As implemented, however, Title VII frequently applies extraterritorially to U.S. firms' foreign branches and affiliates and the non-U.S. market participants with whom they transact without meeting the direct and significant standard.

Further, under SEC rules, a non-U.S. firm (whether part of a US group or not) that trades with a non-U.S. client through personnel located in the U.S. must comply with a wide range of Title VII requirements – despite the fact that such personnel arrangements are critical to the maintenance of global market liquidity across multiple time zones.

Regulators are empowered to address these competitive disparities by allowing firms to comply with U.S. rules through "substituted compliance" with comparable non-U.S. rules. In practice, however, U.S. regulators have failed to make substituted compliance determinations in several key areas, and in others they have imposed limitations and/or conditions that seem antithetical to the goal of substituted compliance. As such, regulators' substituted compliance framework has not prevented the emergence of competitive disparities.

SIFMA believes that regulators should ensure reasonable and usable substituted compliance frameworks, as well as, in the case of the SEC, eliminate the application of requirements due to personnel location test.

<u>Margin and Capital</u>

New margin and capital requirements were central elements of Title VII's enhanced regulatory regime. Unfortunately, however, issues related to the implementation of the margin and capital rules continue to create challenges for the derivates markets. Inconsistencies in uncleared margin rules ("UMR"), for example, across the CFTC, SEC and bank regulators cause competitive disparities between bank and non-bank, and U.S. and non-U.S., swap dealers and security-based swap dealers, despite Dodd-Frank's directive for harmonization across the U.S. regulators.

Inconsistency among non-bank margin regulations could be addressed by joint enactment of portfolio margining, as Congress directed. Further, U.S. bank regulators should grant substituted compliance regimes as DFA intended. Additionally, DFA did not complete the work needed to ensure U.S. bank regulators provide cross-netting capital relief by permitting recognition of the risk reducing nature of netting sets or hedged positions when calculating the capital required against counterparty exposure.

Another area where either the rules themselves, or the implementation thereof, do not live up to Congress's mandate is regarding eligible collateral for uncleared margin. The CFTC should confirm, as market participants have requested, that U.S Treasury money markets are eligible collateral, as they have recently done for U.S. Treasury ETFs.

SD/SBSD Regime Modernization

With more a rule set with over a decade of experience at the CFTC and nearly four years at the SEC, SIFMA believes it is appropriate to revisit rules for swaps dealers ("SDs") and securities-based swaps dealers ("SBSDs"). Specifically, the CFTC and SEC should examine where their rules add costs without commensurate benefit, create competitive disparities, and/or set up unclear or impossible expectations whose only benefit is enforcement penalties rather than setting market regulation which establishes appropriate customer protection, market integrity and regulatory transparency. Another area ripe for review is for the CFTC to improve transparency of data and methodology for setting block size and reporting caps and require periodic reconsideration of block levels and reporting delays. Working with market participants, the agencies can apply the lessons learned and more appropriately tailor requirements.

CFTC/SEC Harmonization

Renewed emphasis should be placed on the need to harmonize, to the extent possible, Title VII rule implementation between the CFTC and SEC, as divergences persist that seem to have little meaningful policy rationale. Because Dodd-Frank divided regulation of swaps and security-based swaps between the CFTC and SEC, many dealers are dually registered, subject to both regimes which are in many cases similar, but not identical and therefor they must meet different requirements for what is essentially one business. Examples of this include rules and interpretations pertaining to dealer regulation, transaction reporting, and margin, to name a few. The lack of harmonization can breed inconsistency, uncertainty and other market frictions. To avoid these consequences, SIFMA urges U.S. regulators and relevant SROs to ensure greater rule harmonization and consistency in rule application and interpretation.

**Securitization**

Securitization plays a unique role in how credit is raised for consumers, businesses, and commercial activities providing for efficient allocation of capital and diversification of risk to increase credit allocation. U.S. securitization markets, which are the largest and most advanced in the world, attract investment capital from around the globe to provide credit for lending for home mortgages, auto loans and leases, business capital, credit and equipment needs, and many other forms of lending and leases. For example, securitization funds over 75% of mortgage lending, driven primarily by the critical TBA or "to be announced" market that allows mortgage lenders to lock in forward rates on behalf of home buyers at low or no cost, and mitigate interest rate fluctuation risk between the time a consumer enters an agreement to purchase a home and closes that transaction. Without vibrant securitization markets, the U.S. would be far more reliant on bank balance sheets to fund lending, as is the case in Europe, and this would decrease the availability of capital while increasing risk to the financial system. Notably, the EU has undertaken an effort to jump start its securitization market for exactly these reasons. Dodd-Frank ushered several important enhancements to securitization regulation – rules that have improved resilience and stability. However, SIFMA believes there are several revisions to that rule set that would materially benefit the provision of credit and, consequently, the U.S. economy, without compromising the safety and soundness of the financial system.

DFA Section 942(b)/SEC Regulation AB II

One of the lessons of the financial crisis for securitization was the importance of transparency into the assets that collateralize a securitization. While collective industry efforts to improve this disclosure were under way, Dodd-Frank required, and SEC implemented in Regulation AB II, asset-level disclosure for various kinds of asset backed securities. Regulation AB II's prescriptive, inflexible, and excessive requirements substantially increase legal risk to issuers and underwriters and put securitization at a competitive disadvantage compared to other forms of financing.

SIFMA believes that the costs to financial markets of Regulation AB II far outweigh the perceived benefits of the complex disclosure it requires. The reality is that Regulation AB II has effectively shut down registered (i.e. public) RMBS markets since 2014 due to the impossibility of production of the data for the 270 required data fields and legal risk associated with errors. Specifically, the SEC should review, reduce, and rationalize the number of required data fields for various types of asset-backed securities, in particular for residential mortgage backed securities ("RMBS").

DFA Section 621/SEC Rule 192

Dodd-Frank Section 621 prohibits securitization participants from engaging in any transaction that creates a conflict with any investor, with limited exceptions. Section 621 was included in Dodd-Frank in response to pre-crisis activity that was interpreted to be market participants betting on the failure of their own transactions. Section 621 prohibits shorting a transaction for which a firm is a securitization participant, as well as any economically equivalent transaction. The SEC finalized rule 192 in 2024 to implement Section 621

While Section 621's intentions are sound, the legislative text is very expansive and lacks clear boundaries.  Consequently, the SEC's implementing Rule 192 is drafted in an overly broad and vague manner, making it difficult for both the SEC and market participants to interpret and operationalize. To wit, the SEC's rulemaking process alone took nearly 15 years. Regulatory changes including the implementation of the Volcker Rule and regulatory capital requirement revisions have transformed how regulated institutions transact in securities markets. Arguably, these changes have obviated the need for Section 621, as has the fact that these transactions no longer exist in the marketplace. Moreover, other SEC authorities, including its anti-fraud authority, apply to these pre-crisis transactions, a fact underscored by post-crisis litigation and enforcement actions brought under those authorities. Accordingly, SIFMA believes that Congress should revisit and eliminate Section 621.

DFA Section 1002/Definition of a "Covered Person"

Under Section 1002 of Dodd-Frank, the Consumer Financial Protection Bureau ("CFPB") has regulatory authority over "covered persons.". Though securitizations are generally governed by the SEC, the CFPB under previous administrations took a more expansive view that a securitization trust could be a "covered person" within the purview of the CFPB, expanding the CPFB's reach beyond consumer-facing primary markets into secondary markets where there is no interface with the consumer. The interpretation was novel, given that securitization trusts are limited purpose legal entities created solely for the purpose of securitization, do not engage with consumers, and do not provide products or services to consumers. Historically, liability for malfeasance in the servicing of loans in a securitization lies with the servicer, the sole entity in the securitization chain whose responsibility it is to service the loans. Unfortunately, the CFPB's novel interpretation was recently validated by a federal district court in a litigation brought with respect to the National Collegiate Student Loan Trusts (NCSLT). However, earlier this year, the current CFPB took action to forestall the application of this novel legal interpretation, providing immediate relief – but the going-forward threat and legal precedent remain.

The implications are weighty. Should this interpretation be applied across securitization asset classes, increased litigation risks from purported servicer malfeasance – risks that should be borne by the servicer – would be borne by investors because securitization trusts are now vulnerable to efforts by the CFPB to extract settlement monies and other forms of compensation from secondary market participants. Pricing for those risks would ultimately be felt in higher cost costs for consumers, whether it be auto loans, credit cards, mortgages, or other securitized loans.

SIFMA believes that Congress should clarify that a securitization trust cannot be a "covered person" under Section 1002, reversing the CFPB's overreach and restoring liability to the actors who actually commit malfeasance in a securitization.

Securitization Capital Requirements

U.S. risk-based capital held for securitization positions, and related liquidity requirements, were increased following the financial crisis. In addition, in calculating the adequacy of capital for purposes of CCAR, the shocks calculated for securitization were made extraordinarily high. Accordingly, and pursuant to the discussion in the Prudential Regulation section above, SIFMA believes it is now appropriate for a recalibration of existing capital and liquidity standards as applied to securitizations.

**Additional Regulatory Concerns Stemming from DFA**

Non-Bank SIFI Designation

Title I of Dodd-Frank established the Financial Stability Oversight Council ("FSOC"), whose primary responsibility is ensuring the stability of the U.S. financial system. There are many important roles played by the FSOC, including facilitating inter-agency discussions, assessing the overall health of the financial system, and analyzing the costs and benefits of multi-agency regulatory initiatives. However, the FSOC also has the statutory authority to label non-bank financial entities as "systemically important financial institutions," or SIFIs. Should the FSOC designate a non-bank entity as a SIFI, that entity would be subjected to prudential supervision by the Federal Reserve, including bank-like regulations and capital requirements.

SIFMA has consistently advocated that SIFI designations are inappropriate for asset managers and investment funds because they operate differently than other types of financial entities. Despite asset managers' limited threat to financial stability, the FSOC has revisited systemic designations for asset managers several times since Dodd-Frank became law.

SIFMA has consistently supported legislative efforts to refine FSOC's authority and refocus FSOC on its core interagency role and mandate to recognize systemic risk across the entire financial system. Short of such a more fundamental refinement, SIFMA believes that FSOC should bring greater transparency and predictability to the designation process by reverting back to the guidance it issued in 2019.[10] That guidance prioritized an activities-based approach to systemic risk and instituted strong due process provisions, including a clear commitment to conduct a cost-benefit analysis and assess the likelihood of financial distress or failure for any non-bank financial company under consideration or designation. SIFMA's Asset Management Group is joining other financial services trade associations to request that Treasury Secretary Bessent and other members of FSOC step back from the most recent 2023 guidance[11] that widened the definition of "threat to the financial stability of the US," expanded the industries and activities that could be designated, and eliminated the aforementioned due process provisions.

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[10] *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* 84 Fed. Reg. 71,740 (Dec. 30, 2019).
[11] *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, 88 Fed. Reg. 26,234 (Apr. 28, 2023).

## Incentive Compensation (Section 956)

Dodd-Frank Section 956 requires six federal agencies to jointly prescribe regulations – or guidelines – that prohibit incentive compensation that they determine encourages inappropriate risk that could lead to material financial loss to covered financial institutions. In 2010, the Federal Reserve, the OCC and the FDIC jointly adopted the interagency *Guidance on Sound Incentive Compensation Policies*, which is still applicable today, raising questions about what problems continued rulemaking efforts seek to remedy.

The 2010 guidance is a principles-based approach which promotes effective compensation arrangements without being overly prescriptive. It wisely reflects, unlike proposed rulemakings in 2011 and 2016, an understanding that any oversight of incentive compensation must be dynamic and flexible so that it can be reasonably tailored in its application to allow firms to take appropriate business risks, compete for talent and reward good performance; cover only those individuals who could expose an institution to the risk of material loss; and apply only to those incentive compensation programs that could incentivize inappropriate risk. Further reinforcing the governing legitimacy and efficacy of the 2010 guidance, in 2024 Federal Reserve Chair Jerome Powell noted that the guidance "seems to have largely worked."

In the aftermath of the 2008 financial crisis, the financial services industry made significant strides in calibrating risks to their incentive compensation arrangements, resulting in improved governance and risk management. Boards are more actively involved in the design and review of compensation policies and programs, which are closely reviewed by institutions' risk functions. Financial institutions also work with their regulators to ensure their compensation policies appropriately balance risk and reward. Most financial institutions' compensation policies already have several components that are appropriately tailored to mitigate risks without introducing new ones, such as vesting and deferral periods, holding requirements for stock ownership and robust cancellation and clawback provisions. In addition, financial institutions' compensation arrangements are subject to scrutiny from various stakeholders and ever-increasing regulation, including the 2010 guidance. Accordingly, SIFMA believes that Congress and regulators should recognize that Section 956 is largely duplicative of the existing regulatory tools and repeal this provision.

## Permissioned Customer Information Sharing (Section 1033)

Section 1033 of Dodd-Frank requires financial institutions to provide customers access to their financial data and the ability to share it with third-party applications. This section was intended to provide customers with more control over their data and foster competition among financial institutions. The CFPB was tasked with promulgating rules to establish the parameters of this provision. Unfortunately, the CFPB's 2024 rule failed to adequately protect financial institutions or their customers. Customer privacy requirements were not imposed on data aggregators and fintechs despite those entities handling the same customer PII held by financial institutions. Further, such entities did not have clear liability for failing to protect such information, leaving financial institutions on the hook for mistakes made by these more lightly regulated players. Rather, Dodd-Frank should have called for privacy protections to follow PII regardless of whether the entity holding the data is a federally regulated financial institution. Without such protections, customer financial information is at risk of being misused, stolen, sold, or hacked, and customers and financial institutions will bear the costs.

**Conclusion**

In conclusion, the U.S. financial system is significantly stronger and more resilient than it was before Dodd-Frank was passed in 2010. This is a good thing. However, SIFMA believes that it is now appropriate to evaluate whether certain components of the regulatory framework developed under mandates from the Dodd-Frank Act are excessively conservative and impose costs on the U.S. economy, our financial markets, and on Main Street that outweigh their benefits. We appreciate the Committee's interest in exploring these important questions on this fifteenth anniversary of Dodd-Frank.