

ICI VIEWPOINTS

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The Challenges of Dodd-Frank Implementation

Even though our industry was not a direct target of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), funds face challenges in coping with the law's implementation. At the U.S. Chamber of Commerce's [Fifth Annual Capital Markets Summit](#) yesterday, I had a chance to discuss several of these challenges and their implications for funds and regulators alike. Here are a few takeaways from that discussion.

Multiplicity of Regulators

Despite many calls for consolidating U.S. financial regulatory agencies, under Dodd-Frank we find ourselves monitoring and interacting with a significantly broadened array of regulatory bodies on behalf of our member funds and their investors: the Financial Stability Oversight Council (FSOC), the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Commodity Futures Trading Commission, as well as funds' primary regulator, the Securities and Exchange Commission (SEC). Other industries also are dealing with the new Consumer Financial Protection Bureau. This development—more regulators—introduces new uncertainties into our operations.

Use of Expansive Powers

Many of these regulators are new to our industry, and one—the FSOC—is simply new. That lack of familiarity heightens our concern in areas where regulators have been granted expansive authority and where we have yet to see how they will exercise it.

For example, precisely how the FSOC will exercise its authority to designate systemically important nonbank financial companies (or "SIFIs") for heightened supervision and regulation by the Federal Reserve Board remains an open question. The FSOC's public pronouncements to date reveal very little about the Council's views.

ICI has urged that the FSOC reserve its designation authority for very limited circumstances—where it has determined both that a specific company poses significant risks to the financial system and that other regulatory measures are clearly inadequate to address those risks. The FSOC and other financial regulators must not forget that they have multiple regulatory tools at their disposal. [As I wrote on Viewpoints last month](#), SIFI designation is just one of those tools, and a rather blunt one at that.

We are also concerned by instances of regulators making conscious policy decisions to propose rules that either go beyond Dodd-Frank's requirements or that are unnecessary to

implement the statute. Take, for example, the issue of proxy access. Dodd-Frank expressly provided that the SEC may “exempt an issuer or class of issuers” from any new shareholder access requirements, implicitly requiring the SEC to consider the impact of its regulations on unique classes of companies and to provide a reasoned justification for its decision to include them within the rules. Yet despite the material differences between investment companies and operating companies—which we brought to the SEC’s attention during the comment period—the SEC’s rulemaking on proxy access inexplicably treats them the same.

The Need for Effective and Efficient Regulators

There is another part of Dodd-Frank implementation that has nothing to do with any particular rulemaking but very much warrants our attention, namely Dodd-Frank’s focus on reforms that would make the SEC itself a better, more efficient, and more capable regulator.

To this end, as required by Dodd-Frank, the SEC commissioned [a study by the Boston Consulting Group](#) (BCG). The BCG report, which was delivered to Congress on March 10, paints a picture of an agency that has made steps in the right direction, but has far more to do.

In particular, the BCG report observes that the SEC needs to enhance its industry knowledge and develop greater expertise in risk management and data analytics. We very much agree with this assessment. There is a compelling need for the SEC to inform itself about its regulated industry and market, as well as the economic consequences of its regulations. Without that, the SEC is likely to continue to propose rules that could make financial firms or products less competitive, less innovative, less attractive to talented professionals, and less available to investors. We believe more can and should be done to develop the agency’s economic research and analytical capabilities, and we sincerely hope that it takes the recommendations in the BCG report to heart.

Dodd-Frank has the potential to improve the regulation of our financial system, and we in the fund industry are working hard to meet with the law’s implementation schedule. To make these reforms a success, regulators must proceed with care and strike the right balance.