

AEI-Brookings Conference

Is Excessive Regulation and
Litigation Eroding U.S. Financial
Competitiveness?

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Key CCMR Recommendations On Reform of the SEC

- SEC should conduct more and better cost-benefit analysis.
- SEC should adopt principal-based rules.
- SEC should modify its supervisory and enforcement approach.
- SEC should increase coordination with:

Foreign securities regulators

State securities regulators.

Summary of Opinions on CCMR Recommendations

- I generally agree with them.
- But they should be bolder.
- And they are unlikely to be adopted unless the SEC's incentives change.
- One way to change the SEC's incentives -- change the way it is funded.

Increased Cost-Benefit Analysis (“CBA”) Alone Won’t Matter Much

- Hard to argue against good CBA.
- But there’s a bigger problem.
- SEC policy is driven by legal/political considerations, not economic considerations.
- Unless this is changed, more cost-benefit analysis alone won’t have much effect.
- Quantifying all costs and benefits of most policies is elusive.
- Lots of wiggle room in CBA to “justify” bad regulations.

An Alternative Recommendation

- The Office of Economic Analysis should be *required* to offer an analysis and opinion of all rules proposed by SEC staff.
- These analyses should be disclosed to the public.
- These analyses might include cost-benefit analysis.
- But they need not be confined to cost-benefit analysis.

Advantages of Alternative Recommendation

- Institutionalizes economic analysis at the SEC.
- Discourages staff from proposing inefficient rules.
- More likely to result in experimentation, pilot programs, etc.

A Bolder Recommendation

- The Office of Economic Analysis should be able to propose new regulations or the repeal of existing regulations.
- Would facilitate the scaling back of prescriptive rules.

The Downside of Greater International Coordination

- Cooperation on enforcement, clearing and settlement, and information sharing are good.
- But when it comes to policy, there's a fine line between cooperation and collusion.
- Competition among regulators is good.
- Sarbox is a good example.

Should We Change the Way the SEC is Funded?

- The SEC's historical aversion to economic analysis is probably a rational response to the incentives it faces.
- These incentives are related to the fact that the President proposes and Congress authorizes its budget.
- An alternative funding structure would change the incentives and perhaps result in a more nimble SEC and more efficient securities regulation.
- The Federal Reserve is one possible precedent.
- The U.K.'s Financial Services Authority is another:

“The FSA is accountable to Treasury Ministers, and through them to Parliament. It is operationally independent of Government and is funded entirely by the firms it regulates.”

FSA Website, January 30, 2007