THIRD WAY

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JIM KESSLER: All right. Now we're going to get started.

Five years ago, on a sweltering July day much like this, the president signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. It is one of the few laws in the nation's history that actually bears the names of its lead authors in the official title, and its passage should have been a cathartic celebration in Washington. After all, it came on the heels of the most severe financial meltdown in 80 years. It was the most significant finance reform law in 75 years. If you're one to keep score on such things, it was a victory of Congress over Wall Street, hands down. But perhaps of greatest importance, it achieved this dramatic reform without dismantling the finance industry in America, but correcting its abuses and allowing it to grow in a more healthy way in the future.

And with the usual caveat that no law of this size and scope is perfect, five years after its passage the law has never seemed to earn the respect and love that it deserves. The haters of Dodd-Frank still hate-hate-hate, and even some of the – some on the Democratic side, if you listen to a lot of folks that are running for office, they act as if the law never occurred at all. Yet here we are, five years later, and our finance sector is strong and healthy; big banks are better capitalized; a consumer protection agency is protecting consumers; and while the world reels from, you know, a collapsing stock market in China and the problems in Greece, our markets are just, you know, shaking it off.

On this anniversary, we are pleased to have with us this morning the lead House author of the bill, Barney Frank. And we can thank the pope for many, many things, but one on the tops of my list we can thank the pope for having Barney Frank elected to Congress, because he filled the open seat of Father Drinan in 1980 after the pope said that he could no longer serve in Congress. And there was nobody in the U.S.

House like Barney Frank before he got elected, and there's going to be no one like him since he's left. He's progressive but pragmatic, brilliant but in touch with ordinary people, partisan but also a bridge-builder and a great legislator, and of course a trailblazer, and I'd be remiss not to mention an author of a fantastic book that I read over the last couple weeks, an autobiography that I think is absolutely marvelous and is worth reading if you are in love with politics.

And interviewing him will be our friend, and he's now reached the point of Washington institution, Al Hunt, columnist for Bloomberg View; over the past several decades, columnist at The Wall Street Journal; a regular on network and cable television at Bloomberg and beyond. He's earned the reputation of one of America's most insightful commentators, who unites both substance and politics.

So thank you both for joining us. Al Hunt will interview Barney Frank. We'll have time for some questions. So let's get it rolling. Thank you.

AL HUNT: Hey, Jim. Thank you very much. That was a very kind introduction and a very nice way of saying that I'm very old. (Laughter.)

But 50 years ago, when I was getting into – deciding between law and journalism, I spent a few days covering the great James Reston, the columnist of The New York Times, and I told him I was conflicted between law and journalism. And he said, young man, by all means go into journalism because, almost by definition, the people that you will meet, the people you will write about are interesting. So if you want to spend a lifetime meeting interesting people, go into journalism.

And no one – no one typifies that wise advice better than Barney Frank. I have known Barney Frank for 48 years, literally. He is one of the most interesting people any of us have ever known. When I first met Barney, as he writes in his book – this was in 1967 in Boston – he proudly proclaimed that he was a liberal progressive Democrat, but he hid in the closet the fact that he was a gay man. And fast forward 40-some years, and he now proudly proclaims that he is a gay and happily married man, and he sort of hides the fact that he's a liberal progressive Democrat. (Laughter, laughs.) Times have changed.

Barney, let's just start with a general. Five years later, as Jim said, there still are a lot of Republican, in particular, critics of Dodd-Frank, and some on the left. Give us a sense of how you think it's working versus what you envisioned when you enacted it, what some of the challenges are, and what some of the misperceptions are.

BARNEY FRANK: Well, I'll start with the – with the right. I do think that the criticism of the left is now – basically, there are people who have some criticism on the left. Overwhelmingly, they are people who are very supportive of what we did but want to go further, as opposed to people on the right who would like to – although they're reluctant to put that to a vote – to undo most of it.

The first criticism of the right was that it was so complicated, so heavy-handed that it was interfering with the ability not just of the financial industry to make money, but because of their centrality to our economy that it was a drag on the economy. Jeb Hensarling just repeated that the other day, that this is a – this is a job-killing bill. So I was very happy to pick up today's New York Times, headline on page B5: "Morgan Stanley Profit Rises 13 Percent; Chief Credits U.S. Economy." The argument that the legislation and the subsequent regulation somehow retarded our economy is very hard to make, given that our economy is doing better than anybody in the world. I guess maybe, according to them, if we hadn't passed the financial regulation bill, we would have been even better than everybody else. But that's not what they were saying at the time. This "job-killing bill," the only time we have seen better progress in reducing unemployment was during the '90s, in the Clinton administration.

As to what it's accomplished, and it's – you know, it mostly – and I speak about the absence of negatives, because this was not a bill to do positive things. And someone said, well, you're claiming credit for the bill, for the economy. I said, no, absolutely not. There's this distinction. What I'm saying is that we were able to do some corrections of abuses without hurting the economy, so the absence of a negative effect is what I'm asserting.

There are two other major things that we have done that have had the effect of preventing negatives. The single most important is you can't make the kind of bad loans that were being made back then. And I noticed Hensarling, again, on Saturday in his radio address, said we've done nothing about Fannie Mae and Freddie Mac. I say "we" because he complained that our bill didn't do more about Fannie Mae and Freddie Mac. He has, in fact, been chairman of the committee for two-and-a-half years and has done nothing, and the Republicans – he was chairman of the subcommittee for two years before that. But more importantly, the bill did take direct aim at the problems involved in Fannie and Freddie Mac – Fannie Mae and Freddie Mac: we abolished the bad mortgage loans. So that was a very important thing to do. You cannot – literally cannot make those loans. By the way, that's the only thing we abolished – we prohibited. Mostly we changed the rules about how they do things.

The other thing that we have done – AIG, recently in the paper because of that lawsuit – and I must say I was puzzled that the judge sympathized with them, even though he didn't give them any money – but I thought that AIG lawsuit was an example of the arsonist suing the fire department for water damage. (Laughter.) But what AIG did was to irresponsibly incur nearly $200 billion more in credit default swap debt that it couldn't repay. That could not happen today. No institution could go out there and issue, get involved in derivatives, and incur these debts without having money to pay for it, et cetera. So those are just two examples.

And the third thing, I'd tell you right where there was a very positive effect. I was at the consumer bureau yesterday with Chris Dodd, and they credibly argue they have been responsible for $10 billion, cumulatively, being returned to consumers. And I think that was one of the biggest advances in protection of individuals that we've seen in a long time economically.

MR. HUNT: Barney, is "too big to fail" still a threat?

MR. FRANK: Not nearly as much as it was before, and I appreciate that question. AIG was an example of "too big to fail." AIG was kept alive as an institution, even though it was way beyond what it could pay in debt. And Ben Bernanke, with the approval of Hank Paulson and the Bush administration – by the way, one of the things I have trouble with is this notion of Democrats and bailouts. There were five bailouts during the financial crisis and our response to it. There was AIG, the TARP, Fannie and Freddie, the auto. All of the bailouts that took place were initiated by the Bush administration. Oh, and Bear Stearns. I mean, there were five bailouts: Bear Stearns, Fannie and Freddie, the TARP, AIG and autos. Every one of them was initiated by the Bush administration, and three of them the Democrats joined in. Two of them the Bush administration did on its own.

But what happened with AIG we have now made illegal. You cannot now have the federal officials pay off the debts of a large institution and keep it in business. It is true there are and always will be institutions who are so big that if they fail they can cause serious problems, because they won't pay their debts and that will cycle on. But we now have new rules. The federal government steps in and takes over that institution, dissolves it – "resolves it" is the odd word that is used. When you dissolve a bank, it's called "resolving" a bank. I have no idea why, but that's what it is – the institution's out of business. And any money that the federal government has to advance is repaid by an assessment of large financial institutions. And even before that, if you are in the category where we think you could cause serious problems if you can't pay your debts, you are subject to much tougher supervision.

And the argument from, again, the conservatives, is, oh, that's a favor you're doing to the big banks – when they are named a financially – a significant financial institution, that that somehow is a favor to them. Well, the law makes it clear that some institutions are going to be covered: Citicorp, Bank of America, et cetera. But there are others over which the Financial Stability Oversight Council has discretion whether or not to include them, with one exception: CIT, which likes to be designated because they want to be clear that we'll be a financial institution, not just a collection agency. Every genuine financial institution that has been threatened with inclusion has fought like hell. MetLife is suing against it. Fidelity's hired big lobbyist calls me up: How can they – don't let them do this to us. So the notion that this is a favor is absolutely wrong.

And the fact is that – now, you know, some of my friends on the liberal side have said, no, no, there is where – you didn't do that well enough. You have to break up the institutions. The problem with that is – Jim and I were talking before – the institution whose failure precipitated the crisis was Lehman Brothers. Well, it wasn't very big by these standards. I mean, so if you want to make sure that there's no institution which is itself so big that its failure could cause a problem, then every – no institution can be bigger than Lehman minus whatever it is.

And Elizabeth Warren, for whom I have great admiration – I'm very proud of our collaboration – but I disagreed when she said we need to do Glass-Steagall to solve "too big to fail." Even if you did do Glass-Steagall, you would still have institutions that were too big to allow them to fail without consequences. If you cut Citicorp or JPMorgan Chase or Bank of America in half, you would still – then you would have two institutions that were "too big to fail." I mean, there may or may not be good reasons for Glass-Steagall. I think – but leaving that aside, that wouldn't solve "too big to fail." So there isn't – I don't think there is any way in this world that you're going to say that no institution can be so big that you don't pay it out.

By the way, I think the most thoughtful criticism of what we did, it comes from Tim Geithner and others in the – there was a partner of Mitt Romney – I forget his name, a guy from Bain – who wrote a very serious book about all this. They believe that we have made it too hard for the federal officials to jump in and give them more liquidity. They think we've tightened the spigot too hard and would like to limit it some. They say, well, you know, there might be a situation where it will be essential to come in and help one of those institutions and keep it alive for stability's sake. My answer is, given what's gone on in America today, if that were to be the case – I don't foresee it, but if that were to be the case, you'll have to go make it to Congress. There is no way, in the current situation, you can continue to have the executive branch unilaterally empowered to keep a large financial institution alive.

MR. HUNT: Barney, you mentioned Glass-Steagall as an aside. Would you reinstate Glass-Steagall?

MR. FRANK: No. First of all, I don't assume anybody would reinstate it in literal terms. And if – you know, an issue – you talk about people having built a name for them, and Glass-Steagall is a great name. I don't know – just an aside – but I don't know if it's still up, but for a while at Reagan National Airport there were a series of quotes from Virginia political history, including one from Carter Glass as a delegate to the Virginia Constitutional Convention in like 1910 talking about how important it was to make sure that no black people could vote because that would be the end of American civilization. That's irrelevant, but most discrediting of him. (Laughter.)

Steagall, by the way, was chairman of the House committee. And our good mutual friend Cokie Roberts has a copy of a brochure quoting Sam Steagall in support of the reelection of her husband, Hale Boggs, in 1942.

MR. HUNT: Her dad, yeah.

MR. FRANK: Or her father.

MR. HUNT: Yeah.

MR. FRANK: But Glass-Steagall's 85 years old. Had Glass-Steagall been in effect in – by the way, Glass-Steagall was in effect – you know, everybody knows this crisis began in the '90s. Glass-Steagall wasn't repealed until 2000. I voted against the repeal, by the way, so I'm not being self-justificatory here. But it would not have stopped the crisis. Glass-Steagall did nothing – said nothing about bad mortgages. You could have issued all those bad mortgages. It also said nothing about derivatives because nobody had ever heard of derivatives, financial derivatives, when they did it. I mean, I – there are things we should be doing. The Volcker Rule is a step towards there. There may be other things you should do to simplify.

But to the extent – the reason I did not want to do Glass-Steagall, particularly at the time, was this: We were in a very difficult economic situation. We were trying to stabilize while we were repairing. To have mandated in 2010 that there should be a substantial upheaval in every significant financial institution in America would not have been helpful for the economy.

I think now, as things stabilize, you can look and see, should we mandate some changes? I think others – Jack Lew said it yesterday, and I agree with this – I think there's a good argument that the large financial institutions are too complex. Interestingly, some of them cite that themselves, because when people ask how come there haven't been charges brought against the top officials of some of these financial institutions, the response is, well, they didn't really know what was going on. Yeah, they couldn't keep track of it. And Jamie Dimon is a very able chief executive. But the argument is, he didn't know what the London Whale was doing in derivatives. It's beyond anybody's span of control. So I think there is a good argument now to talk about ways to simplify them some, and that would have some – move some of the direction of separation. But Glass-Steagall, an 85-

year-old law with a down the – down-the-middle cut, I think is unwise.

MR. HUNT: Yesterday Federal Reserve Chair Yellen, I guess it was in testimony on the Hill, said that either the big banks had to increase their capital requirements or they would face some – or they had to get smaller. Is that the right approach? And what –

MR. FRANK: Absolutely. And in fact, that's a sign of – frankly, what she was talking about was using the powers that are in the financial reform bill law – I call it the "financial reform bill." I try to avoid saying "Dodd-Frank." In my experience, only one man in history has been able to refer to himself in the third person without coming across like a pompous twit, and that was Charles de Gaulle. De Gaulle could call himself De Gaulle, but everybody else – (laughter) – I mean, every Hubert Humphrey, who I greatly admired, when he would talk about himself as Humphrey, he just looked silly. (Laughter.) But –

MR. HUNT: I do remember Bob Dole. Bob Dole –

MR. FRANK: Bob Dole, yes. That's right. Yeah. (Laughter.)

MR. HUNT: (Laughs.) "Bob Dole believes" – (laughs).

MR. FRANK: But the bill specifically – in fact, Paul Kanjorski, who was on the committee and did a very good job on it, was – offered the amendment to specifically give the regulators the power to order the divestiture of any chunk of any large financial institution because of this – so they have the power to do that. And I think she's right. There is two ways you – I mean, raising the capital makes it much likelier that they will fail. And if they – the riskier they are, the tighter you want to make sure the executives control it. But that is a good example. And I think that is a better approach, it seems to me, than Glass-Steagall, which is kind of arbitrary and it's outdated and it – and it cuts everybody in the same way. But the regulators are empowered to order particular – the large financial institutions to divest a particular piece of the business.

MR. HUNT: And how would you assess the role the regulators have played over the last five years? And –

MR. FRANK: Basically, very good. They've been unfairly maligned, and I think – let me put it, most importantly, this way: Yes, there were – it took longer to adopt regulations than, in some cases, people wanted. The Volcker Rule's just going into effect today. But here's the – here's the point. I have not seen any example of a financial institution engaging in an activity that caused harm or that they should not have engaged in according to the law because there was a delay; that is, no financial institution of great size would be dumb enough to try and sneak in ahead of the rule some activity that was later going to be banned by the rule.

And in defense of the regulators, well, there are a couple things. One, the biggest chunk of new authority in the bill was over financial derivatives, and that was the new thing that didn't exist. The New Deal legislation was very good, but neither the Glass-Steagall nor the Securities Exchange Act or the Investment Company Act, none of them dealt with financial derivatives because nobody had ever heard of financial derivatives. They really couldn't have existed without two things: great deal of liquidity from outside the banking system, from exporting surplus countries and oil countries, et cetera; and information technology. I mean, much of what we were doing in this bill was to deal with financial innovations that only became possible in the '80s and thereafter because you could not have securitized all these loans and had all these packages by hand.

So the – what we did was to give the SEC and the CFTC significant power over these new forms. The problem is – and if there was one – if I'd had a magic wand, the one thing I would have done differently in the bill is I would have merged the Securities and Exchange Commission and the Commodity Futures Trading Commission. There is no rational reason for them being there, but they are historically there. The CFTC is seen as the farmers' instrument.

MR. HUNT: So you couldn't have done that, could you, because of politics?

MR. FRANK: No. You would have had Shays' Rebellion break out again if you told the – (laughter) – the farmers that they were being put in with the SEC. But what that means is to get some of these rules – for instance, over the regulation of overseas trading – you need six out of 10 commissioners, three in each body.

And a couple of things. One very important change in regulation. Floyd Norris was a great reporter for The New York Times, kind of a – you know, a grumpy guy. He kind of acted like a character out of the front page, but he was a brilliant analyst. And he had a column in which he said, look, things have changed. Twenty years ago and before, the president named every member of each commission. They had to be Senate-confirmed, but they were all – and all the commissions are 3-2. It developed over the past couple of decades that the president named the chair, but the senators from the committee of jurisdiction, in fact, got to name the other four commissioners. And I talked to Arthur Levitt about that, who had been a head of the SEC, and he said, yeah, it's much harder now to get those majorities. So you had that.

The second issue you had is this, and a third. When we passed the bill in 2010, we did not anticipate a Republican takeover of the House. The bank regulators – the OCC, the FDIC and the Fed – are independent of congressional appropriations. They are self-funded. The SEC and the CFTC are dependent on congressional appropriations. We changed that for the SEC in the House, but the Senate wouldn't go along. So what happened was, as of 2011, the Republicans used their control of the House to starve the SEC and the CFTC of the money they needed. Particularly the CFTC, it's still in the – these are the people who regulate derivatives with the nominal value in the hundreds of trillions. Their budget is $250 million a year, ridiculous. And the SEC, it's 10 times that but still way too low. So part of it was that they were cut back.

The other, one of the most important things that happened to help the bill become a reality was Harry Reid's breaking the filibuster rule, because one thing the Republicans were doing with the filibuster was preserving a conservative imbalance on the courts here in the District of Columbia. The Circuit Court for the District of Columbia hears all appeals for regulations. For an accident of who retired and whatever, the District of Columbia Circuit Court had developed a conservative imbalance. When Obama named people to this court here, the Republicans said, oh, the workload isn't that much, they don't need new judges. They used the filibuster to preserve a conservative majority on the court, consciously. They knew it, everybody knew it. When Harry broke the filibuster, he allowed the confirmation of Obama-appointed judges that eliminated that imbalance.

So those were the two obstacles to regulations that they get knocked for: financially, and they're afraid of – Bart Chilton, who was on the CFTC, said, look, we're afraid to go and regulate. CFTC, one of the first things they did under Gary Gensler, who was a great regulator, was to put a limit on the ability of financial interests to speculate in oil. Basically, what they said was if the only use you have for oil is in your car, your salad and your hair, please do not buy up large amounts of it, because we think you're doing that to do price manipulation. A judge here threw it out, said that's not what Congress meant. I got everybody who had voted for the bill in the conference on the House side to sign a brief that said yeah – yeah, we did. And they said no. So they were intimidated. And I remember saying, are you going to go back? That was another thing that slowed them down. That barrier has been removed. The funding has gotten a little better. The administration has fought for it. But those are the two reasons why the regulations were slower than we thought.

But by now, I think every important regulation is either in place or about to be.

MR. HUNT: Barney, let me ask you a couple backward questions, then a – then a couple forward, then we'll throw it open to you all. The Republicans – it is almost an article of faith among the conservative Republicans that really it was Fannie and Freddie that caused the financial crisis.

MR. FRANK: A couple things.

First of all, it is only the very conservative Republicans who think that. We had the Financial Crisis Inquiry Commission. It had four Republican appointees – six Democrats, four Republicans. One of the Republicans was Peter Wallison, who was a very conservative guy at the American Enterprise Institute. The other three included Bill Thomas, chairman of the House Ways and Means Committee; Douglas Holtz-Eakin, who is a very prominent Republican economist; the third was – Keith Hennessey, was an official there. All three of them explicitly disagreed that Fannie and Freddie were the major cause.

There was a great contention – in fact, what's the name, Peter – the guy from the Financial Times, Martin. Martin Wolf at the Financial Times.

MR. HUNT: Martin Wolf, yeah.

MR. FRANK: Does a big thing about this in his book, and he said no. I mean, there is – this is only them.

As far as it's concerned, as to the logic of it, in the first place Fannie and Freddie never initiated a loan. I mean, they're always, oh, because of Fannie and Freddie we had all these bad loans that were made that failed, but Fannie and Freddie never initiated loans. They bought loans made by other people.

Second point is that Fannie and Freddie were not the major purchasers of these loans for a while, and the other purchasers got – (inaudible).

Third, Fannie and Freddie had no coercive power. This is – the argument from the right wing, it's only half that it's Fannie and Freddie's fault because Fannie and Freddie couldn't have made anybody make a bad loan. What they add on is that it's because the federal government was making people make these bad loans, and particularly they blame the Community Reinvestment Act. No rational person thinks the Community Reinvestment Act, in fact, did that. Advocates understand the Community Reinvestment Act has very few teeth. The Community Reinvestment Act – the only penalty for having a lousy record under the Community Reinvestment Act is that you can't merge your bank. So if you're not planning to merge it, it doesn't come up. And even then, it's not automatic. So that's – I mean, that's the essential point, that they weren't making the bad loans, they were not the only ones buying them, and the argument that it was federal policy forcing banks to make these loans is nonsense.

A couple other points. Even to the extent that Fannie and Freddie were enabling it, the Republicans controlled the Congress from 1995 through 2006. No legislation passed during that 12-year period to regulate Fannie Mae and Freddie Mac. This is in the appendix of my book. Mike Oxley tried to pass a bill in 2005 to regulate Fannie and Freddie. The House passed it. The Senate Republicans didn't like the House bill, Bush sided with the Senate Republicans, and no bill passed. This was at a time when Bush was president and the Republicans controlled the House and the Senate. Mike Oxley's explanation, when asked how come you failed to do anything about Fannie and Freddie, said because President Bush gave me the one-finger salute.

And so Hank Paulson becomes the secretary of the Treasury in 2006. He writes this in his book. He says, I want to go after Fannie and Freddie. He's told by all the other guys in the White House, don't do that; it's too much – it causes too much of a Republican problem. He says, I got to do it. He goes to Bush, and Bush says, OK, you can do it. And in fact, he didn't because Karl Rove, he said, said to him, look, you did him a favor by coming down here; he won't say no to you. So as Paulson writes in his book, in 2007 – in 2006, when it looks like we're going to take over, he calls me and I promise him that if I'm the chairman we'll fix Fannie and Freddie –

you know, we'll step in. And we did. And so Fannie and Freddie, as of 2008 when he put it into conservatorship, have not been a problem. In fact, they've made money. There was an argument to go further, but at that point the Republicans took over and haven't done anything.

But the essential point is that it was the – it was the making of the bad loans that caused the problem. And Fannie and Freddie did enable some of them, but they were not the major enabler and they didn't make any of the loans, and there was no federal pressure to do that.

By the way, there is a history of people trying to stop these subprime loans. It is a history of liberal Democrats trying to stop them and conservative Republicans saying you're interfering with the free market. As recently – as late as 2007, when I finally was chairman and we passed a bill in the House to ban the subprime loan abuses – language that later became part of the law under the financial reform bill – The Wall Street Journal had an editorial that said, why is Frank doing this? He's keeping low-income people, particularly minority, from owning homes. We don't understand why he's upset. And this was, I thought – go look at it: November 6th, 2007. After all, 80 percent of these loans were paying on time – not a statistic that is usually cited as a mark of soundness in financial activity.

So that is the – by the way, Alan Blinder, Mark Zandi, Sheila Bair, who was the head of the FDIC, appointed by Bush – nobody thinks, except a handful of right-wingers, that Fannie and Freddie were the major cause.

MR. HUNT: The argument from the left is, Barney, that it was Bob Rubin and Larry Summers and Bill Clinton, with deregulation beating up on Brooksley Born and everything, that that was a –

MR. FRANK: There's some truth to that, although the administration did support the repeal of Glass-Steagall. My objection to the repeal of Glass-Steagall, by the way, consistent with what I said before, was I thought it was outdated. It was 80 years old and things had changed. But I wanted to replace it with new regulation. Yeah, I think the Clinton administration made a mistake in that.

On the other hand, the legislation that passed in 2000 that prohibited the SEC or the CFTC from regulating derivatives was not Clinton's. Clinton did not willingly support that. Phil Gramm put that into an overall appropriation, and it was one of those things where the president had to sign it. They put it in there and went home. So, yeah, I think they were – they were made to do that.

On the other hand, the Democrats in Congress in 1994 passed a bill called the Homeowners Equity Protection Act, which told the Federal Reserve to regulate these kinds of loans, and Alan Greenspan refused to do it. But I think it's fair to say the Clinton administration was slow in doing that. The Bush administration, however, took it much further. I mean, they – you and I talked, Al –

MR. HUNT: Was Brooksley Born right?

MR. FRANK: Yes. Oh, yeah, Brooksley Born was right. We consulted her a lot in the – you know, she was one of our major presenters at press conferences, yes. I think the Clinton administration and Larry Summers and Bob Rubin were wrong and overruled her.

MR. HUNT: You think you can convince Larry Summers that he was wrong and Brooksley Born was right? (Laughter.)

MR. FRANK: I think if you read what he says he implicitly says that without saying I was wrong, because –

MR. HUNT: Yes. (Chuckles.) Those are hard words for Larry – for Larry to utter.

I'm going to ask one or two more questions, then we'll turn it over to you all, who I'm sure have some much more profound questions.

Barney, looking ahead, both Hillary Clinton and even more so Elizabeth Warren have talked about changes that ought to be made. The other said has its idea of changes, too. What changes would you like to see in Dodd-Frank? Every bill, going back to Roosevelt's New Deal, needs to be perfected as you go. And what changes would –

MR. FRANK: One of the problems you have is – one of the problems you have, frankly, both with the Affordable Care Act and the financial reform bill, is, you know, generally when – the legislative process, you – we don't have exactly the stare decisis rule of the Supreme Court, but at some point you need to have acceptance of what happened. If you're going to re-litigate every policy decision that's ever made when the majority changes, you'll have a very unstable situation.

At some point you have to say, OK, look, the Democrats voted against Part D of Medicare, but it's the law now and I'm about to apply for it, so. (Laughter.) And the Republicans insisted they will not participate in fixing it because to pass a bill that only fixed some pieces of it and didn't repeal it would be an acknowledgement that it was not a terrible thing. So that's part of our problem.

What I would do would be this. Dan Tarullo gave a very good speech – who's kind of the lead regulator as a Fed governor – he gave a very good speech in April of last year in Chicago at a conference. He said: And I think we made a mistake. We put this $50 billion mark in to say you were financially significant. That was – it should at least have been indexed. And, you know, some banks now are growing to it. I would have done that.

The biggest one is this, and it's something we could not have anticipated. What the Republicans are doing, very cleverly, is they're using the small banks as a bait-and-switch thing. They talk about how the bill has been terrible for the small banks. When they actually got one chance to legislate, they passed an amendment that dealt with the requirement that you move the swaps activity out of the bank into a separate subsidiary. The number of $3 billion asset banks that have swaps that's going to cause – (inaudible) – is zero. So they talk about the community banks, but when they had a chance to legislate they did Citicorp's biggest – the biggest favor list. But –

MR. HUNT: Small banks were critical in you getting Dodd-Frank through.

MR. FRANK: Well, they were very helpful. And we – look, we did some things for them. They said we have – we're too busy to be dealing with the regulators all the time. If you remember – if your bank is less than ($)10 billion in assets, you are not regulated – you're regulated by, but you're not inspected or you're not examined by, the Consumer Financial Protection board. Bigger banks there's a separate examination, not for smaller banks.

Just under the Volcker Rule there's a rule about banks between 10 (billion dollars) and 50 (billion dollars); under 10 (billion dollars) there's not. We changed the deposit insurance basis that they requested, the independent community banks, so that the bigger banks now play more and the – and the smaller banks less, saving them collectively well over a billion dollars a year. They wanted us to increase the amount of deposit insurance to ($)250(,000), which we did, because they felt at a disadvantage when it was only ($)100(,000).

Here's what I found and had not anticipated, that banks under ($)10 billion are not really not affected by the Volcker Rule. They're not affected by executive compensation. I was at a conference and talking about this – a compliance conference – and I was being interviewed. And I said, well, I think the problem is that a lot of lawyers are convincing these community banks that they got to do more than they do – need to do, and it's a problem. And a couple of lawyers sitting at the interview said, yeah, you're right, but in our defense we got to worry about malpractice. So I do believe that a number of smaller banks are overly complying with the law, spending more time and energy than they should proving that they are in compliance with rules that we never thought applied to them. Tarullo suggested explicitly exempting some of them from that, and I would be in favor of doing that.

There is one regulatory thing that has troubled me. To get the bill through, we had – we banned some loans. And then we said, for other loans – residential mortgage loans – the biggest problem was you went to securitization, which meant that the lender had no responsibility financially if the borrower wouldn't pay off. They made loans and they got sent into securities and nobody was responsible. We put into the law risk retention; that, if you make these loans and sell them, the person who puts them into a security has to take the first 5 percent of the loss. We thought that was very important.

The liberal groups and the bankers and the homebuilders and the realtors said, ah, that's going to be too tough. We won't get enough loans made. So we still have – I wanted to have three categories of loans: loans that are so bad nobody should make them; the great bulk of loans; and then, to get the bill through the Senate, at the request of Senator Landrieu we created a third category. The request – here was the request: You need 60 votes and I'm 60, so you got to do it. The answer was, yeah, you're right. (Laughter.) So we created a separate category of residential mortgage loans that were super safe and didn't have to have residential – or didn't have to have risk retention. And the regulators got persuaded to basically put everybody into the super-safe category. The loophole ate the rule. I think that's a mistake. I think it – fortunately, it's not – it could be undone. But that – there is risk retention elsewhere in the system, but not for residential mortgages. But I would give some specific exemptions to the smaller banks and put the ($)50 billion – index it at least.

The other one – but it helped prove how good the bill is – the auto dealers were successful in getting auto loans exempted from the consumer bureau. By the way, there was this myth that the big banks have all the political power. The political power goes to those businesses which have natural grassroots networks. There are realtors in everybody's district. They're at the Kiwanis Club. And the realtors, not only in everybody's district, they have a very outgoing corporate culture. They're the "Hi, how are ya?" guys. They're out there selling. The bankers are sitting like this, saying no to you. (Laughter.)

The independent insurance agents are the most effective. They beat the pants off the big companies. And the auto dealers – everybody loves their friendly auto dealer. "Hi, I'm Joe. Come on down and I'll give you this deal!" They're the kind of figures of fun, but in a good way, and they sponsor Little League teams. And there's one other factor that a good deed went rewarded. The one – so they got – they lobbied and got auto dealers exempted from the consumer bureau.

And it was one issue – I lost on that; I fought it – it was the one issue where minority members of the committee, especially African-American members, split. Generally they were 100 percent on the pro-consumer, pro-regulatory side. But a number of the African-American members voted with the auto dealers. And I said to each – it was because they had African-American auto dealers in their districts call them up and say, you know what? These car companies are the only ones that put us in business. General Motors, Ford, Chrysler, the others, look, the African-American community is a community like any other that buys cars, maybe more than in some other areas. The auto dealers had apparently done a better job of literally franchising minority members than others – although it didn't sway Maxine Waters, even though her husband Sidney was, like, the biggest Cadillac dealer on the – on the West Coast. But I mean, the auto – so I learned that, so we lost.

So the bill now does not cover auto loans. If you've been reading The New York Times, what you see is that abuses in consumer lending have migrated now to automobiles. It's almost a laboratory experiment that shows that the one area where the consumer bureau doesn't have any authority is the area where there's now a problem. They're trying to get around that by going after the banks, the consumer bureau.

MR. HUNT: Let's throw it open to questions here. And do we have a microphone? We do. OK, great. Right over there.

Q: Thank you very much, Al and Congressman Frank. Eric Garcia, economics reporter at National Journal.

You know, like you said, there are still a lot of liberal groups who say that Dodd-Frank didn't go far enough. Secretary Hillary Clinton said in her speech last week that she would appoint regulators who don't believe – who believe that "too big to fail" is still a problem. You said it's not as big a problem as there is now. And she said she wants to go beyond Dodd-Frank. What are your – what are you concerns about going beyond Dodd-Frank? Is there anything that needs to be done beyond Dodd-Frank besides, like you said, the auto loans –

MR. FRANK: Well, the specifics – I read her specifics, and one would be to use the power that the regulators have to begin to force them to divest. She has also talked about being tougher in prosecution, and I share that. I am puzzled as to why there have not been prosecutions of individuals. That's another one that she – that she talked about. I am not in favor of Glass-Steagall. I am in favor of moves, regulatory and maybe legislative if you have to, to uncomplicate some of the banks.

MR. HUNT: She didn't come after Glass-Steagall.

MR. FRANK: No.

MR. HUNT: Right.

MR. FRANK: Hillary did not, no. And I think with regard to "too big to fail" it is important making sure that people understand that this is what we are – that we are going to use it.

MR. HUNT: I appreciate the fact that you identified yourself. I hope everybody will do that.

Let's turn to some more questions. This is not a shy crowd, I know. Right back – yeah. Or right here.

Q: Good morning, Congressman Frank. Good morning, Mr. Hunt. Monique Frazier with HSBC.

Congressman, as you know, Dodd-Frank is not the only regulatory reform that's going on in the world. Other regions are incorporating their own view of regulatory reform. Can you speak to the level of coordination when you were in Congress and the progress that was made thus far?

MR. FRANK: I was pretty domestic in my impetus, maybe because I think much of what we try to do in foreign policy is kind of fruitless because we can't make anybody do things. But during my four years as chairman, I spent a lot of time consulting with others. I had a very close relationship with the successive market regulators at the EU – Charlie McCreevy and then Michel Barnier. I used to meet – I met several times with Jim Flahrety, who was then the treasurer of Canada. We met often with the English. I even met a couple times – I met with the parliamentary committee from the European Union on several occasions. I met with the parliamentary committee from Canada.

We understood that we needed to coordinate for two reasons. First of all, because you have multinational institutions that could not, should not be subjected to conflicting (views ?). Secondly, the financial institutions early on adopted the model of the 13-year-old child of divorced parents – well, mommy said I could do it; oh, and if mommy says no then you go to daddy and you play them off against each other. And we were determined not to do that. And I think we had a pretty good degree of coordination.

Now, there was one complication. What do you do – (phone rings) – it's me. I'll just ignore it.

MR. HUNT: Is that you or me?

MR. FRANK: Me. I'll just ignore it.

MR. HUNT: You. (Laughter.)

MR. FRANK: What do you do when a bank does fail when it has multiple branches in many different countries? The general rule we adopted was that it would be resolved – i.e., dissolved – according to the rules of the host country.

There was one other example of this where we persevered and the SEC and the CFTC did it, and that was the question of what rules apply to the derivative activities of overseas subsidiaries of American banks. The London Whale was the example of this. That was a British-based subsidiary of JPMorgan Chase. And we said in the law that we gave our regulators the power to cover them – these were American banks – if they screw up. And that was a tough fight to get the SEC and the CFTC to do it. An what they agreed to – and Gary Gensler, again, does a good job and they worked this out – was this: We will regulate – we will subject the overseas subsidiaries of American banks to our regulation on derivatives unless our regulators rule that the host country's regulations are at least as good as ours. And I think that's been our general principle. We offer coordination, but the basic principle is nobody who could be subject to our jurisdiction gets less than what we think is the – is the minimum.

And there's also been great effort to coordinate, obviously, in capital withdrawal, but at one point here I agree with Jamie Dimon. There was a risk waiting in the capital controls, and his argument was that the Europeans were being kind of soft on the risk weighting. And I think there's a great argument for not risk weighting and general leverage ratio because there's an inherent subjectivity in risk weighting that makes it unreliable. So I understand there's an inherent difficulty here, but we have been working hard to try and resolve the host, and in particular to prevent regulatory arbitrage, of people moving from one place to another.

MR. HUNT: Got time for a couple more. There's one back there. We have a microphone.

Q: Thank you, Chairman Frank. Aaron Klein, Bipartisan Policy Center.

Recently there's been some potential disruptions or a lot of commentary talking about the decline in liquidity, particularly in the bond market. And I wanted to ask you kind two related questions. One is, do you think that's something that ought to be of concern? And the second point is, do you think Dodd-Frank, particularly the Volcker Rule or other regulations, are driving a decline in liquidity? Or do you think it's something else?

MR. FRANK: First, I think it was – it's something to be studied, and they are studying it. There was a one-day short period where there was a problem with some liquidity in the bond market. It was resolved pretty quickly. It did no lasting harm.

I'd say a couple things. First of all, when you are implementing new rules, you often have some bumps that get worked out. I am unpersuaded that this was caused by a tightening of the regulation. To the extent that there was – there is some lost liquidity, I – Paul Volcker said it: Liquidity is not the overriding value before which everything else must fall. And the point about liquidity is, I think, to a great extent in the financial industry, the virtues of a lot of this trading that the liquidity shows go to the benefit of the institution. One of the problems has been – and I hope that the legislation and future regulation will deal with this – I think there has been a tendency for some of the activity in the financial industry to be of primary benefit to the industry itself rather than its major purpose, which is to facilitate economic activity in the real economy. And some of these dipsy-doodles I think were in that – in that form.

So I – the answer is it's reason to look at it. Nobody's made a coherent case to me that it was – either that it's a serious ongoing problem or that it was caused by the legislation. And the final point is this: If it does turn out that there was something in the regulation that caused it, it's not an either/or, it's a more or less. So the response would be to maybe loosen up a little bit, but it doesn't require any qualitative change.

Can we get Shelia Crowley right here from the – oh, I'm sorry, just behind you and then – right – no, there –

MS. : Sorry.

MR. FRANK: All right. We'll do the two behind, but Sheila's – yeah.

Q: Thank you. Thank you. Good morning, Barney, Mr. Hunt. I appreciate you calling on me. Shelia Crowley with the National Low Income Housing Coalition.

And, Barney, I'm interested in your view about the current status of Fannie and Freddie. And if you were in Congress or you could wave a magic wand, you know, they remain in conservatorship, the stockholders are suing to get their money back, the monies – the profits are being swept into the Treasury, and Congress has stalemated on making any changes. It seems to be that everybody is just sitting back and waiting to see what will happen. Your thoughts about that?

MR. FRANK: Yeah. What we did – we recognized – and I was slow to see the Fannie and Freddie problem. My support for Fannie and Freddie was for the part of housing that I've always supported. That's why Shelia and I have worked so well together. I am a great believer in making rental housing available to lower-income people as opposed to – I think you do them no favor when you give them a chance to default on a loan. And rental housing is a perfectly decent way to live if we build it right. And that's one of the things that we did in the bill that we hope is now going to survive. And Mel Watt has promulgated the – that some of the profits that Fannie and Freddie now have go into the Low Income Housing Trust Fund.

The one point is I am told that the people who run this are pretty confident that that shareholder suit is over, that they are not – the shareholders are claiming that – it's kind of like the AIG. Remember, the judge did say that AIG had been unfairly treated, but they weren't entitled to any money because they were totally bankrupt when it happened. On Fannie and Freddie, I – if I'm chairman I'm convinced that it needs to be changed. We do what Hank Paulson asked me to do – substantially, not entirely – and he puts them in a receivership. People should have seen the bleeding, the losses to the government and to society that resulted from some of

Fannie and Freddie's activities ended in 2008. And by now, Fannie and Freddie make money for the government and they are a major support for the housing industry, and there are none of the problems that were before, partly because in the bill there aren't any bad loans for them to transmit or anybody else to transmit.

Having said that, I do think it's – it would be a good idea to change it. It's a – there was a consensus – there was within the Obama administration, in the – in the Senate with Senators Warner and Corker, with some minority – and the Republicans and some Democrats in the House, to replace Fannie and Freddie with an entity that could be – would be set up according to federal law but it would be privately held, and its function would be to sell lenders protection against interest-rate volatility.

And here's the argument that I think is accurate: If we want as a society to preserve the option of fixed-rate 30-year mortgage loans for people – most societies don't have that – but if we think that's important, then you have to have some way for the lender to protect herself against interest-rate volatility. I'm not going to make a 30-year loan at a fixed interest rate, except a very high one, if I don't know what the rates are going to fluctuate. So there is this consensus: replace Fannie and Freddie with these – they wouldn't be giving you any protection on credit risk, but on interest-rate risk. But here's the problem – that seems to be the way people would like to move.

Whatever that does, I would hope that we would transfer the – we do have a Low Income Housing Trust Fund now, just started up. A certain percentage of that goes into affordable housing, rental housing for very low- and low-income people. The Republicans in the House hate that. So what they did was to say, OK, if you're going to have that money you can't have any other money in HUD. So they made that a substitute for rather than an additive to other HUD funding. The Senate did not go along, and I'm hoping the administration in whatever budget negotiations they have –

although I'm told that there is now – the Republicans will not bring any appropriations bill to the floor of the House because it will raise the issue of the Confederate flag and they are afraid to do that.

MR. HUNT: It will raise the issue of the what?

MR. FRANK: The Confederate flag. That has been the case, they won't bring it because they'll get into a big fight over the – over the Confederate flag.

But here is the problem. The Financial Services Committee, which has jurisdiction in the House, has become totally dysfunctional. The reason is that there is a major political battle going on between the chairman of the committee, Jeb Hensarling, and the speaker of the House, John Boehner. And I just take it from all the Republican sources.

It is clear to Boehner that Hensarling would like to replace him. Hensarling is the conservative candidate to replace Boehner. Knowing that, Boehner is not going to force Hensarling to do something that violates conservative principles to give him a casus belli, but neither is he going to give him anything that allows him bragging rights.

Hensarling is a very fundamentalist believer in free enterprise. While there is this consensus for chartering some institution that will give him – for those who follow this, it was Tim Geithner's option three. It's the Corker-Warner bill. It was the Johnson-Crapo bill. And it had a lot of support in the House, including from a couple of Republicans. But John (sic) Miller, the Republican in the House who most advocated for this position, a pretty conservative guy, has quit the Congress, probably because of his frustration being on the committee with Hensarling.

But Hensarling is an economic fundamentalist: no Ex-Im Bank, terrorism risk insurance came only over his objection. The reason you are not seeing anything happen how is that Hensarling will not – and here's Hensarling's problem. He was – he's still yelling about the fact that we haven't fixed Fannie and Freddie, but he's been in charge of that since 2011.

But here’s the problem: his fix is a – just abolish everything and leave it to the free market. Most people in the housing market and elsewhere are convinced that if you do that you will not have 30-year fixed-rate loans.

So he muscles his bill through his committee, but Boehner won’t let it – it doesn’t have the votes to pass the House, even if Boehner let it come up. On the other hand, Boehner is not going to force him to go along with this other thing. So the reason for the deadlock is that even though there is a pretty good consensus involving most of the players that this kind of a guarantee system – with, from our standpoint, a little of it going into the housing trust fund – is the best way to do it, the Hensarling-Boehner disagreement means that nothing will happen.

On the other hand, people don’t feel the urgency because the housing market is – Fannie and Freddie are helping the housing market and they’re making money for the Treasury and putting a little into the housing trust fund. So that’s probably going to continue as long as you have this split within the Republican Party for reasons I’m not sure why. But the most conservative Republicans in the House have the tightest control on the Financial Services Committee.

MR. HUNT: We have time for one more question. And in the front row there, have you been –

Q: (Off mic).

MR. FRANK: With who?

Q: Pensions and investments, the nonbank financial institutions, the institutional investors and pension funds.

Do you think –

MR. FRANK: The bankees as opposed to the bankers.

Q: (Laughs.) Well, the money behind the hedge funds and the – and the private equity. Do you feel that it – for the nonbank asset – financial institutions it accomplished what you wanted to? Or is there more you’d like –

MR. FRANK: Yeah, on the whole. There's a disputed area with some on the left. I did not think that – for instance, I don't think that the mutual fund industry should be covered as a SIFI. I don't – nor plain vanilla insurance companies. So, you know, partly I talked to people who were in the district I represented, Fidelity and Liberty Mutual. I think the Financial Stability Office head counsel has enough to do with the people who play games. So, yeah, I think – I think it has – I don't want to see them taken over.

As to the hedge funds, I am pleased to see there is now for the first time not actual regulation in hedge funds, but information. One of the things we do is there is now – the hedge funds have to report information, and that's important because it should be an early warning system. So I am happy with the way they are implementing the information requirements.

As you know, there's a separate question about the fiduciary responsibility to pension funds. We did not have jurisdiction over that. Pension funds are under ERISA and under the jurisdiction of the – of the committee which is called the Education and Labor Committee when the Democrats are in power and the Education and Workforce Committee when the Republicans are in power – literally; the Republicans don't like the word "labor," so they call it "workforce." But with regard to the major institutions, all long as they don't start taking them over as SIFIs, then I think it's going well.

MR. HUNT: Barney, we're going to close. This has been just absolutely terrific. What do you look for from Janet Yellen? And if there should be any kind of a crisis – a mini-crisis – did the AIG decision, is that going to impede –

MR. FRANK: No, because that's – I wish people – I'm glad you mentioned that. The AIG decision was based on the law as it was before our bill passed, and it said that when they acted in 2008 they had no authority to do what they did.

MR. HUNT: And now they do.

MR. FRANK: We have since given them authority. And in fact, that's directly causal.

Bernanke and Paulson came to us and said, hey, look, Lehman Brothers, we had – we had two choices: somebody goes bankrupt and we pay none of the debts or we keep them alive and repay all of the debts. Give us a, to quote a phrase, third way of how to resolve these – (laughter) – and that's what the bill is. It's a third way between the total bankruptcy of Lehman Brothers and the bailing out and keeping them in business of AIG. What I would hope she would do would be to – you know, to carry out the law.

I am troubled by one thing. We did recognize that there may be times when businesses, because of a national crisis – not their own problems – need some help. So we allowed the Fed – and we abolished the provision whereby the Fed could extend money to any one institution it wanted to if it felt like it, if it thought it was expedient. That was AIG. We said instead if there is a crisis in which some institutions, more than one, are illiquid but not insolvent, if they are basically solvent but there's a cash flow problem, the Fed can set up a facility that advances that.

The rule they prevented – here I agree with Elizabeth Warren, and she's joined with Senator Vitter on this – the rule they propose reflects their view that we were too tough and it tries to – it loopholes that. What it says is, OK, the Fed can lend money as long as its two institutions and as long as they're not in legal bankruptcy. That's too high a standard to say that, you know, you can be insolvent and not in bankruptcy, so they need to revise that rule. And then they need to be simply – to carry out what the law says. But I think what you quoted her as saying today when you mentioned – that's exactly the right use of the legislation.

MR. HUNT: Barney Frank, you can see the wisdom in what James Reston told me 50 years ago. It's been a fabulous 48. Let's have 48 more. Thank you very, very much. (Applause.)

MR. KESSLER: Thank you. Thank you to our guest. Thank you so much. Thank you to our audience for coming out on a – on a busy July week.

Our next event is on Friday, actually, for lunch. And it's Jason Furman in the Senate Dirksen Building, I think at 12:30, but I'm not exactly sure: "Inside the Jobs Report." Thank you again.

(END)

TOPICS

FINANCIAL SERVICES 70