CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

March 4, 2014

Mr. Robert deV. Frierson
Secretary
Board of Governors of the
Federal Reserve
20th Street and Constitution Avenue
Washington, DC 20551

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Office of the Comptroller of the
Currency
250 E Street, SW
Washington, DC 20219

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading
Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Treatment of certain Collateralized Debt Obligations backed primarily by trust preferred securities with regard to prohibitions and restrictions on certain interests in, and relationships with hedge funds and private equity funds. 12 CFR Part 44, Docket No. OCC-2014-0003, RIN:1557-AD79; 12 CFR Part 248, Docket No. R-1480, RIN: 7100 AE11; 12 CFR Part 351 RIN: 3064-AE11; 17 CFR Part 255, Release No. __, RIN: 3235-AL52: 17 CFR Part 75 RIN: 3038-AD05.

Dear Mr. deV. Freierson, Mr. Feldman, Ms. Murphy, Ms. Jurgens, and To Whom It May Concern:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for the capital markets to fully function in a 21st century economy. The CCMC welcomes the opportunity to comment to the Board of Governors of the Federal Reserve ("Federal Reserve"), Federal Deposit Insurance Corporation ("FDIC"), Securities and Exchange Commission ("SEC"), Office of the Comptroller of the Currency ("OCC") (also collectively as the "regulators) on the proposed ***Treatment of certain Collateralized Debt Obligations backed primarily by trust preferred securities with regard to prohibitions and restrictions on certain interests in, and relationships with hedge funds and private equity funds*** ("proposed regulation").

The Chamber supports the efforts of the regulators to address the unintended consequences of the Volcker Rule upon trust preferred bonds. While the CCMC supports the efforts to correct this specific issue, as a matter of principle we have concerns that the use of interim regulations or guidance is not an appropriate means to holistically deal with the potential adverse collateral impacts of the Volcker Rule. The CCMC believes the proposed regulation does not go far enough and that the regulators should:

1) Exempt trust preferred securities issued on or prior to December 10, 2013, to correlate the activities of institutions with the final approval of the Volcker Rule by the regulators;

2) Take similar action with respect to collateralized loan obligations ("CLOs") to prevent unintended consequences on a form of financing that provides $300 billion in capital to businesses;

3) Assess the impact of the Volcker Rule specifically upon trust preferred securities and CLOs and generally upon the capital markets through an economic analysis as required by the Riegle Act; and

4) Through the regulators inter-agency working group, work with a group of market participants to "war-game" the implementation of the Volcker Rule, spot potential problems and craft solutions to be put in place before the end of the conformance period.

Our concerns and solutions are discussed in greater detail below.

I. Background

On January 21, 2010, President Barack Obama proposed a ban on proprietary trading and named it after former Federal Reserve Chairman Paul Volcker, its chief architect. This proposal was eventually included in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 619 of the Dodd-Frank Act containing the so-called Volcker Rule seeks to ban covered bank entities from engaging in proprietary trading.[1]

On October 11, 2011, the Board of Governors of the Federal Reserve, FDIC, SEC, and OCC voted to release a joint Volcker Rule proposal. This joint rulemaking, encompassing 298 pages and over 1,200 questions, was published in the *Federal Register* on November 7, 2011. The CFTC voted to release its version of the Volcker Rule Proposal on January 11, 2012, almost 90 days after similar action by the Federal Reserve, FDIC, SEC, and OCC.

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[1] Section 619 of the Dodd-Frank Act defines proprietary trading as: The term 'proprietary trading', when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b) (2), determine.

The CCMC wrote to the regulators expressing concerns that the Volcker Rule, as proposed, will have far reaching, negative consequences and is procedurally deficient in several regards.[2] Most importantly, the Volcker Rule proposal will impede the ability and increase the cost of non-financial businesses to raise capital and manage risk.

The regulators finalized the Volcker Rule on December 10, 2013.

II. Discussion

While much of the focus of the legislative language and regulatory implementation of the Volcker Rule has been concentrated on the financial sector, little attention has been paid to the impact that this proposal will have on capital formation for non-financial companies. Indeed, for the full impacts of the Volcker Rule to be understood, one must consider the proposal in conjunction with proposed derivatives regulations and their impact upon end-users, the potential reduction in the utility and viability of money market funds expected to result from the pending proposals issued by the SEC, the impact on commercial lending by proposed credit risk retention rules, and new lending and liquidity standards required by the Basel III capital accords.

For non-financial companies, changes to any one of these regulatory initiatives will cause the cost of capital to rise. The cumulative impact of all of these impending changes, including the Volcker Rule, is that many firms, particularly smaller ones, will likely be completely shut out of capital markets. Others may not be able to access

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[2] *See* comment letters of October 11, 2011, November 17, 2011, December 15, 2011, January 17, 2012, February 13, 2012, February 14, 2012, April 16, 2012, November 16, 2012, September 25, 2013, November 7, 2013, November 25, 2013, December 4, 2013 and January 14, 2014 from the U.S. Chamber of Commerce to the regulators and FSOC.

bank lending or find they are unable to adequately hedge risk in certain circumstances. This will make the overall economy less stable and less conducive to growth.[3]

a. Trust Preferred Securities

Because of the broad ownership definitions in the Volcker Rule, banks were forced to mark-to-market trust preferred securities and started efforts to divest themselves of these instruments. Trust preferred securities are a device used by businesses and banks, including community banks, to raise capital. The final Volcker Rule included a broad ownership definition that swept in trust preferred securities owned by banks. As was widely reported this had an immediate and disproportionate impact upon community banks which are an important liquidity provider for Main Street businesses. As a result, many financial institutions that never had proprietary trading desks were forced to mark-to-market trust preferred securities and began to divest themselves of these instruments. The proposed Volcker Rule did not provide fair notice that any final rule might impose such requirements on them and were therefore not given a meaningful opportunity to comment. This unexpected development has the potential to create fire sale conditions for trust preferred securities and this harms the overall stability of the financial system.

The CCMC supports the efforts of the regulators to resolve this issue. However, we have concerns that the proposed regulation permits institutions to hold trust preferred securities issued prior to May 19, 2010. We believe, however, that such a fix should conform to the finalization of the Volcker Rule and that such a change should include trust preferred securities issued prior to December 10, 2013. While we understand that the date chosen by the proposed regulation conforms to Section 171 of the Dodd-Frank Act, many smaller institutions may have made business decisions

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[3] In addition to the comment letters referenced earlier you will find attached as Appendix A and Appendix B recent testimony given by the Chamber at two separate Congressional hearings, the first is a hearing of the House Financial Services Committee held on January 14, 2014 entitled ***The Impact of the Volcker Rule on Job Creators, Part 1*** and the second a hearing of the House Subcommittee on Capital Markets and Government Sponsored Enterprises held on February 25, 2014 entitled ***The Dodd-Frank Act's Impact on Asset-Backed Securities***.

not realizing that they could have been impacted by the Volcker Rule. Conformance with the finalization of the Volcker Rule may prevent dislocations upon Main Street financing through a logically consistent fix.

b. CLOs

The CCMC believes that the proposed regulation should also take action to correct the unintended consequences of the Volcker Rule upon CLOs.

CLOs are a form of a securitization that provide $300 billion in financing to businesses in 47 states and the District of Columbia that collectively employ over five million Americans. CLOs are primarily used as a non-investment grade vehicle and give small, midsize, or challenged businesses a stream of capital formation. A broad swath of corporate America participates in this market, including companies from the health care, energy, retail, entertainment, and telecommunications sectors, to name just a few.

Because CLO portfolios are managed and comprised almost exclusively of senior, secured non-real estate corporate loans, they performed well during the financial crisis. The CLO market performed largely as expected during the financial crisis. Unlike structured products based on subprime mortgages, many of which experienced considerable losses in recent years, investment grade CLO tranches experienced very few aggregate losses.[4] In the past 16 years combined, CLOs have experienced a cumulative *impairment* rate of approximately 1.5%, and the actual *loss* rate was even lower, which is well in line with investor expectations. The Federal Reserve Board acknowledged a low default rate for CLO collateral in its Report to

[4] In fact, most CLO debt downgraded during the crisis has been subsequently upgraded with most originally rated AAA tranches still rated at least Aa- or better, even under new stronger requirements from the agencies. CLO mezzanine debt, originally rated below investment grade, will not take any losses and CLO equity outperformed original pre-crisis expectations.

Congress on Risk Retention in October 2010, citing the aligned incentive mechanisms inherent in CLO structures.[5]

As with trust preferred securities, the Volcker Rule's excessively broad definition of "ownership interest" also has negative consequences for CLOs. This definition is used to determine whether a bank owns an interest in a covered fund, like a hedge fund, that must be divested under the Volcker Rule. The regulators far exceeded their authority under the statute to the extent their definition of "ownership interest," includes not only equity in such a fund, but also the "right to participate in the election or removal" of the investment manager. In so doing, regulators swept certain bank bond portfolios into a prohibition directed at hedge fund ownership.

As a result many banks are being forced to sell off debt like CLOs and may not participate in offering such notes in the future. CLO notes are clearly debt, not equity, and have a long track record of stable and steady performance – the historic default rate of CLOs is under 1.5%, and the loss given default much lower than that. U.S. Banks currently own about $70 billion worth of CLO debt. In addition, foreign banks whose operations are subject to the Volcker Rule own about another $60 billion in CLO debt. Any effort to restructure this amount of debt would be overwhelming. As a result banks are likely to begin selling off these performing assets, which will put downward pressure on prices and start a rush to liquidate. Equally important, this will remove a major source of liquidity from the CLO market, and make it harder for businesses that need the CLO market for loans to find the financing that they need to operate, grow, and create jobs.

Accordingly, the CCMC requests that the final proposed regulation includes corrective action to prevent negative consequences for the CLOs and the businesses that use them for capital formation.

c. Economic Analysis

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[5] *See* Board of Governors of the Federal Reserve, Report to Congress on Risk Retention, October 2010.

As the CCMC has repeatedly written to the regulators, the use of economic analysis as required by law to promote smart and lawful regulation could have identified these unintended consequences of the Volcker Rule.

As we have noted, the Volcker Rule will have a wide ranging economic impact and the regulators failed to provide a cost-benefit analysis even though the OCC went so far as to declare it an economically significant rulemaking. Without a cost-benefit analysis, the regulators did not allow commenters to understand the economic impacts of the Volcker Rule. These procedural irregularities impaired the ability of commenters to provide the regulators with informed comments on the Volcker Rule. We write today to further explain these procedural concerns associated with the absence of a cost-benefit analysis in the proposed regulation and why this should provide an opportunity to use economic analysis for the issues presented by the proposed regulation and for the Volcker Rule in general.

The absence of cost-benefit analysis for the Volcker Rule is inconsistent with the obligations of the Federal Reserve, FDIC, and OCC under the Riegle Community Development and Regulatory Improvement Act (Riegle Act, 12 U.S.C. §4802(a)). This law applies to all "Federal banking agencies" defined by cross-reference in Section 4801 of the Riegle Act (12 U.S.C. §1813) to include the OCC, FDIC, and Federal Reserve. The Riegle Act mandates that "[i]n determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations." [6]

[6] 12 U.S.C. §4802(a) (emphasis added).

The Federal banking agencies covered by the Riegle Act must meet these commitments whether or not they are raised by commenters in the course of a rulemaking because they are statutory requirements for their exercise of rulemaking authority by the relevant agencies that impose "additional reporting, disclosure, or other requirements on insured depository institutions." There can be no question that the proposed regulation imposes such additional obligations on insured depository institutions for purposes of the Riegle Act. As an organization representing both depository institutions and their customers, the CCMC has an interest in ensuring that regulators honor their obligations under the Riegle Act. We note that these requirements also apply to many of the other regulations associated with implementation of the Dodd-Frank Act by the Federal Reserve and other Federal banking agencies, and not just the proposed rule cited in this letter. To date, however, we have not seen the required cost-benefit analysis for the proposed regulation or the Volcker Rule. And these defects in the Volcker Rule cannot be cured by using an interim final rule and the unique procedures associated with it to address just one of the particularly egregious unintended consequences of the final rule that was not a logical outgrowth of the proposed regulations.

d. Market Participants Working Group

The CCMC is very concerned that the issues surrounding the trust preferred bonds and CLOs are only the first in a series of unintended consequences that will present themselves as the Volcker Rule becomes operational. Rather than deal with these issues on an ad-hoc basis, or for possible systemic issues as the conformance period ends, we propose that a market participants working group be created to work with the regulators to identify problems with the Volcker Rule and craft solutions through negotiated rulemaking before the end of the conformance period in July, 2015.

Such a group should include but not be limited to small, medium, and large businesses, financial institutions of varying sizes and institutional investors. This group can work with the inter-agency Volcker Rule working group to "war-game" the implementation of the Volcker Rule. This is a form of smart regulation to get out ahead and solve problems before they create actual market harm.

III. Conclusion

The CCMC supports the efforts of the regulators to correct the issues surrounding trust preferred securities through the proposed regulation. However, we believe the proposed regulation must abide by rule-writing procedures and cost-benefit analysis requirements mandated by law. For the reasons outlined above, we also believe the proposed rulemaking must be expanded.

Specifically, the proposed regulations should be expanded to exempt trust preferred securities up through December 10, 2013, to correlate the activities of institutions with the final approval of the Volcker Rule by the regulators. Additionally, the proposed regulation should be expanded to include CLOs and prevent unintended consequences to a form of financing that provides $300 billion in capital to businesses. The impacts of the Volcker Rule as well as its specific impact upon trust preferred securities and CLOs should be assessed through an economic analysis as required by the Riegle Act.

The regulators inter-agency working group should work with a group of market participants to "war-game" the implementation of the Volcker Rule, spot potential problems and craft solutions through negotiated rulemaking that can be put in place before the end of the conformance period.

We are happy to discuss these issues and proposed solutions with you in greater detail at your convenience.

Sincerely,

Tom Quaadman