CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
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Mr. Thomas J. Curry
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400 7th Street SW, Suite 3E-218
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Washington, DC 20219

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

Re: Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements, RIN 1557-AD97, RIN 7100-AE 51, RIN 3064-AE 44, Docket ID OCC-2014-0029, Docket No. R-1537

Dear Mr. deV. Frierson, Mr. Curry, and Mr. Feldman:

The U.S. Chamber of Commerce ("Chamber")[1] created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC has commented extensively on capital, leverage, and liquidity rules issued by the Board of Governors of the Federal Reserve (the "Federal Reserve" or the "Board") and other banking regulators in the past, with a particular focus on the impact of these regulations on the ability of non-financial businesses to raise the resources needed to grow and operate, as well as to mitigate short- and long-term risks.[2]

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[1] The Chamber is the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are users, preparers, and auditors of financial information.

[2] *See* June 14, 2011 letter from the Chamber to Federal Reserve Chairman Ben Bernanke on G-SIFI surcharges, October 22, 2012 comment letter to U.S. banking regulators on proposed Basel III regulations, September 19, 2013 letter to the

While the Chamber supports efforts to ensure the stability of the financial system, the Federal Reserve, Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Federal banking regulators") have made several choices in its proposal for a net stable funding ratio (the "NSFR," or, the "Proposed Rule") that inappropriately exceed this mission, especially when viewed in the context of other bank capital and liquidity rules, such as the liquidity coverage ratio ("LCR"). Several of the choices made in the Proposed Rule, for example, far exceed the need to withstand a stressed event and instead require those financial institutions required to comply with the rule ("covered financial institutions") to hold additional buffers of capital without a stated justification. Even more concerning is the impact of the Proposed Rule on nonfinancial corporates of all sizes, many of which will be penalized for accessing day-to-day and essential financial services and products.

In particular, the Chamber is particularly concerned that the Proposed Rule lacks a clear description of the market scenario underlying the proposal's calibrations. While the NSFR was initially introduced by the Basel Committee on Banking Supervision ("BCBS") as a longer-term structural funding metric, the proposed calibrations are similar, or in some cases worse than, the calibrations used in the LCR, which is designed as a significant 30-day stress. These calibrations would ultimately subject nonfinancial corporates to undue economic burdens unrelated to safeguarding financial stability, particularly with respect to (1) risk mitigation through derivatives and (2) the treatment of corporate debt.

BCBS on the Revised Basel III leverage ratio framework, September 23, 2013 letter to U.S. banking regulators on enhanced supplementary leverage ratio standards, January 31, 2014 letter to U.S. banking regulators on liquidity coverage ratio rules, January 31, 2014 coalition letter to U.S. banking regulators on liquidity coverage ratio rules, May 28, 2014 letter to NCUA on risk based capital, September 11, 2014 letter to Federal Reserve on Capital Plan and Stress test rules, September 19, 2014 letter to Bank of International Settlements on the Net Stable Funding Ratio, letter of February 11, 2016 on Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, letter of March 21, 2016 to Federal Reserve on Framework for Countercyclical Capital Buffer; and letter of June 3, 2016 to Federal Reserve on single-counterparty credit limits.

Furthermore, the Proposed Rule lacks any clarity on the analytical bases for the calibrations, particularly for certain provisions relating to the treatment of derivatives. One such provision, which applies a 20% required stable funding ("RSF") to the negative replacement cost of derivative liabilities, as described further below, lacks any empirical support or clarity from the Federal banking regulators. We believe the absence of analytical support runs counter to the spirit of the Administrative Procedure Act and should, at a minimum, be reopened for public comment before the proposed rule is finalized.

We also believe that the Federal banking regulators must respect congressional intent to exempt nonfinancial corporates from onerous cost requirements under the Commodity Exchange Act ("CEA") by not subjecting their risk-mitigation activities to additional costs under the Proposed Rule. Congress specifically exempted such companies from clearing and uncleared margin requirements in order to preserve the ability of those companies to effectively hedge their commercial risks.[3] The Federal banking regulators should respect Congressional intent and modify the Proposed Rule to eliminate any potential impact on nonfinancial corporates to the extent that the Proposed Rule contradicts the value of congressionally mandated exemptions. While the Proposed Rule does not undo these exemptions, the consequences of the proposal would not be isolated to covered companies, who would pass on costs of the funding requirements to end-users.

The Federal banking regulators should respect Congressional intent and modify the Proposed Rule to eliminate any potential impact on nonfinancial corporates to the extent that the Proposed Rule contradicts the value of Congressionally mandated exemptions.

More broadly, we must reiterate our long-standing fear that the Federal banking regulators have not considered the impact of the NSFR and related capital and liquidity requirements under Basel III on the ability of small and mid-size businesses to access the financial services they need to promote growth and mitigate short- and long-term risks. Nor have the Federal banking regulators considered the extent to

[3] *See* 7 U.S.C. § 2(h)(7); 7 U.S.C. § 6s(e)(4).

which previous bank capital and liquidity regulations, such as the LCR, the supplemental leverage ratio, and Basel III risk-based capital requirements, obviate the need for the NSFR. Although the Proposed Rule's impact assessment does state that the Federal banking regulators have considered "possible costs to customers in the form of increased borrowing costs,"[4] the overall lack of risk sensitivity in the Proposed Rule strongly contradicts this assertion.

This is particularly true given that the Federal banking regulators base their cost assumption on present day calculations of NSFR funding shortfalls, when such costs could dramatically change in the future—particularly with rising interest rates. We believe that these costs will ultimately be passed down to nonfinancial corporates, making an economic analysis of the NSFR beyond the potential cost to covered financial institutions even more critical. The Federal banking regulators counter that "market constraints"[5] prohibit covered financial institutions from passing on costs to their customers. However, our survey of over 300 treasurers from nonfinancial businesses of all sizes, *Financing Growth: The Impact of Financial Regulation* (the "Financing Growth Report") contradicts this claim. Indeed, close to one-third of respondents to the Financing Growth Report claim that prices for accessing financial services and products have risen as a result of changes to financial services regulations.[6] Consequently, concluding that a covered financial institution would always internalize rising costs without passing them on to their customers contradicts recent evidence to the contrary.[7]

Our concerns are discussed in greater detail below.

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[4] 81 Fed. Reg. 35124, 31561.
[5] *Id.* at 35162, Footnote 105.
[6] Pg. 5, *Financing Growth: The Impact of Financial Regulation*, U.S. Chamber of Commerce (Jun. 16, 2016), *available at* https://www.uschamber.com/sites/default/files/documents/files/financing_growth_report_16_june_16.pdf.
[7] A recent survey released by the Federal Reserve Banks of New York, Atlanta, Boston, Cleveland, Philadelphia, Richmond, and St. Louis also supports the finding that close to a majority of all businesses face a "financing shortfall," meaning that they "received less financing than the amount sought." *See* 2015 Small Business Credit Survey, Pg. 15, *available at* https://www.newyorkfed.org/medialibrary/media/smallbusiness/2015/Report-SBCS-2015.pdf. One of the top reasons cited for such shortfall is "insufficient collateral." *Id.* at Pg. 16 (hereinafter the "Financing Growth Report").

Discussion

I. Undue Burden on Risk Mitigation Through Derivatives

Exemptive Relief for Nonfinancial Corporates Is Needed and Is Appropriate

As discussed previously, one of the Chamber's top concerns with the Proposed Rule is its imposition of NSFR calculations on derivatives transactions with nonfinancial corporates. Companies of all sizes use derivatives on a day-to-day business to mitigate potential risk in their operations. For example, agricultural companies need access to competitively priced derivatives to hedge swings in commodity prices. Other companies use derivatives to hedge fluctuations in currencies and interest rates. Cost-effective access to derivatives is so critical to our membership that 31% of respondents to our Financing Growth Report indicated that "managing risk on price fluctuations on exchange rates, interest rates and commodities" was their top financial concern for their business.[8]

However, the Proposed Rule makes cost-effective access to these risk management tools significantly more challenging as a result of how the NSFR is structured. This includes several of the available stable funding ("ASF") and RSF factors that will apply to various forms of collateral and liabilities, as well as the treatment of collateral that could impact an NSFR calculation. These issues are discussed in more specific detail below. However, their cumulative impact will necessarily result in the costs of new long-term funding requirements being passed down to nonfinancial corporates, making their statutory exemptions from clearing and uncleared margin under the CEA significantly less useful.

These issues and the findings from the Financing Growth Report support our request that derivatives transactions from nonfinancial corporates be excluded from the calculation of the NSFR under proposed Section _.107. We believe that the exemption could be easily drafted to apply to trades by companies that would qualify for the exemptions from clearing or margin requirements under the Federal banking

[8] Financing Growth Report at Pg. 12.

regulators' final margin rules.[9] Importantly, the exemption would be consistent with Congressional intent that the Federal banking regulators, the CFTC, and the SEC "not make hedging so costly it becomes prohibitively expensive for end users to manage their risk," particularly if hedging requirements were to "divert working capital…in a way that would discourage hedging by end users or impair economic growth."[10]

The Chamber strongly believes that the failure to include such exemptive relief in a final NSFR rule would dramatically raise the cost of hedging potential risk, especially at a time when companies of all sizes indicate that this is already a high concern. We strongly urge you to include such exemptive relief in the final NSFR rule.

Improving Risk Sensitivity of 20% RSF Add-On for Future Potential Derivatives Exposure and Other Issues

While the Chamber fundamentally believes that derivatives transactions by nonfinancial corporates should be excluded from an NSFR calculation, we believe that it is important for the Federal banking regulators to tailor that calculation appropriately to the extent such exemptive relief is not provided.

In particular, we have serious concerns with the RSF for 20% of the negative replacement cost of derivative liabilities (which would be added on before deducting variation margin posted) under proposed Section _.107. Many have questioned why this 20% "add-on" is necessary and how it was developed, as it was not included in previous proposals from the BCBS. In fact, the European Union ("EU") has strongly questioned whether a static 20% charge is appropriate, as it:

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[9] Final Rule, *Margin and Capital Requirements for Covered Swap Entities*, 80 Fed. Reg. 74840 (Nov. 30, 2015), *available at* https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf.
[10] 156 CONG. REC. S 6192 (daily ed., July 22, 2010) (statement of Senators Christopher Dodd and Blanche Lincoln). We also note that regulators in other jurisdictions, such as the EU, have adopted capital requirements-related exemptions for nonfinancial corporates, such as an exemption of non-centrally cleated OTC derivatives transactions between banks and such corporates through the calculation of the credit valuation adjustment.

> Could lack risk-sensitivity since it does not take into account the dynamics of the derivatives portfolio over one year and the evolution of the relationships between derivatives assets and liabilities for offsetting portfolios.[11]

We firmly believe that the 20% add-on will eventually become a new "tax" applied to derivatives trades with nonfinancial corporates, which will directly impact the ability of nonfinancial corporates to manage risk. Instead, other alternatives to a blunt 20% tax could be considered, especially in light of preexisting liquidity requirements, such as the LCR and other reforms that mitigate liquidity concerns as a result of leverage, such as the supplemental leverage ratio and the G-SIB common equity surcharge. For example, the EU is considering whether the 20% add-on should be applied as a "floor" and not as an add-on.[12] In this context, the European Commission asked the European Banking Authority ("EBA") to provide more background and evidence on the empirical basis and prudential justification of this element, as well as suggestions for possible alternative, more risk-sensitive, policy options.[13] We believe that such treatment would be consistent with the goal of ensuring adequate long-term funding at a covered financial institution while avoiding the imposition of unnecessary and undue economic burdens on nonfinancial corporates.

The treatment of collateral netting under the Proposed Rule also penalizes nonfinancial corporates in ways that may ultimately raise the costs of accessing risk mitigation tools. While nonfinancial corporates are exempt from posting margin for derivatives with their bank counterparties, there may be times when a nonfinancial corporate may be asked by a counterparty to post initial or variation margin for any number of reasons.

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[11] *See* DG FISMA Consultation Paper on Further Considerations for the Implementation of the NSFR in the EU, *available at* http://ec.europa.eu/finance/bank/docs/regcapital/crr-crd-review/20160526-nsfr-consultation_en.pdf
[12] *Id.* at 4
[13] *See* DG FISMA letter on the EBA report on NSFR *available at* https://www.eba.europa.eu/documents/10180/1466081/(EBA-2016-E-660)%20Letter+from+O.+Guersent,%20DG+FISMA+re+EBA+report+on+NSFR,%20Ares(2016)1729077.pdf

The treatment of securities variation margin under the proposed rule is particularly worrisome, especially with respect to the treatment of U.S. Treasuries. Specifically in the proposed rule, any securities-based collateral would not count towards a covered financial institution's long-term funding obligations by netting against a dealer's derivative receivable, meaning that nonfinancial corporates would not be able to use U.S. Treasuries as collateral in these circumstances. We question why the Federal banking regulators would ascribe this type of rating to U.S. Treasuries, which essentially implies that they are not liquid instruments and incentivizes a divergence towards cash in these circumstances. Again, we believe that a risk-sensitive, "haircut" approach pegged to the quality of the securities-based collateral would be more appropriate in these circumstances.

Additionally, we find that there is little risk sensitivity given to the value of the initial margin provided by a nonfinancial corporate, especially given that dealers would need to hold 85% long-term funding against initial margin posted to counterparties but would have a zero funding value assigned to any initial margin received. This approach effectively ignores the value of any collateral posted by a corporate nonfinancial despite the actual value that initial margin serves. We recommend that the Federal banking regulators address this issue by treating initial margin posted by nonfinancial corporates in the same manner as other high-quality liquid collateral under the NSFR proposal and allow dealers to offset their initial margin posting requirements with initial margin received.

Finally, even in circumstances where nonfinancial corporates do not post initial or variation margin, we note that their counterparties typically enter into "back-to-back" hedges in order to offset the risk incurred by entering into a trade with a nonfinancial corporate. Consequently, a close look at the risk-sensitivity of all funding requirements is necessary, particularly with respect to its potential economic impact. For example, while nonfinancial corporates are not required to post margin for foreign exchange swaps, their counterparties will need to offset that risk into their broader market. The cost of this risk mitigation will factor into the NSFR calculation, which may ultimately impact transaction pricing for the nonfinancial corporate. As detailed with more specificity later in this letter, this is a broader issue that should also

be considered alongside the cumulative impact of several other bank capital and liquidity rules.

II. Treatment of Corporate Debt

The Chamber has consistently underscored the need to examine the impact of bank capital and liquidity standards on market-making, particularly as new reforms such as the Volcker Rule have undercut the ability of capital markets participants to hold corporate debt in their inventory. Our members have increasingly noted the challenges of "going to market," as "blackout" dates and other impediments to raising debt in the market have challenged the ability of efficiently raise capital.

In its current form, the NSFR will no doubt add to this trend by dramatically increasing the costs of holding many types of corporate debt on their balance sheet. In particular, the Proposed Rule adopts a very blunt, bright line approach with respect to investment grade debt and all other debt instead of pursuing a more risk-sensitive approach. Investment grade debt is assigned a 50% RSF factor, but that category is defined as an issuer having:

> Adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.[14]

We believe the RSF factor applied to investment grade debt is incredibly high and should be substantially lowered, particularly when the BCBS has considered a more granular approach that applies much lower factors to highly-rated debt.[15]

If, however, debt does not meet the investment-grade definition, the RSF factor automatically rises to 85%, without regard to the characteristics of the company

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[14] Proposed NSFR, § _.107(b)(5)(i) (citing 12 CFR § 1.2(d)).
[15] *See* Pg. 9, Basel III: the net stable funding ratio, BCBS Supervision (Oct. 2014), *available at* http://www.bis.org/bcbs/publ/d295.pdf.

issuing the debt. This may penalize new entrants into the market which are creditworthy but are entering the debt markets for the first time, impeding the ability of these companies the opportunity to tap into our capital markets.

Instead of pursuing this approach, we strongly recommend that the Federal banking agencies adopt a more risk-sensitive approach, as outlined by the BCBS in their NSFR standards. This approach would appropriately incentivize covered financial institutions to hold stable, highly-rated debt and permit corporates seeking to raise capital greater opportunities for their debt to be held by such institutions. Failure to make these changes will inevitably lead to higher issuance costs, as such costs are typically determined through bid-asks spreads that may be negatively impacted by the disincentive of covered financial institutions to hold and trade certain types of corporate debt (especially when compared to other asset classes).

We are also concerned that the Proposed Rule unfairly penalizes corporate debt based on its maturity, rather than a more holistic assessment of the issuer's creditworthiness. This has a particular impact on the commercial paper market, which is of critical importance to our membership. Our Financing Growth report underscores this importance and how well-functioning commercial paper markets assist corporate treasurers with managing cash flow and liquidity, finding that 43% of companies surveyed identify this issue as their chief concern.[16]

The Proposed Rule has the significant potential to harm markets by continuing to prescribe the same high 50% and 85% RSF factors to short-term commercial paper listed above. This lack of risk-sensitivity again ignores the creditworthiness of the issuer and an assessment of potential for default. Rather than proceed with this option, we urge the Federal banking regulators to consider more granular RSF factors that can apply in this circumstance.

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[16] Financing Growth Report at Pg. 5.

III. Comprehensive Review of Initiatives Impacting Business Capital Formation Needed

Given the several serious issues with the Proposed Rule, particularly with respect to 20% add-on, we would again underscore the need to examine whether the NSFR is necessary in light of the implementation of several other bank capital and liquidity reforms and how the NSFR will impact the broader economy. In this regard, we again draw your attention to our Financing Growth Report. The report is based off of a survey of more than 300 corporate finance professionals, including CFOs and treasurers, and examines the impact of financial services regulatory reform on the availability and cost of the products and services most crucial to the growth of Main Street businesses. Key findings from the report include:

- More than three-quarters of American companies of all sizes believe that the cumulative effect of financial regulations adopted over the past six years is making it harder for them to access the financial services they need;
- 86% of companies surveyed indicated that it is important for financial services providers to provide a wide spectrum of services;
- 57% of all companies surveyed use at least eight critical bank services, including cash management, obtaining short-term and long-term loans, utilizing derivatives for risk management, and issuing commercial paper;
- 65% want financial services providers to specialize in specific products;
- 79% indicate that they are affected by changes in financial services regulation;
- As a result of these changes, 39% of respondents have absorbed higher costs, and 19% have delayed or cancelled planned investments;
- 76% believe that the regulations on the financial services sector will not help their companies' outlook over the next two to three years.

These findings make it all the more important for the Federal banking agencies to conduct a comprehensive study of various regulatory initiatives as well as the impacts of those initiatives on the broader global economy and the capital formation system that is the linchpin for growth.

We believe that such studies are critical to understanding the impact of capital, liquidity, and leverage requirements on capital formation and urge the Federal banking regulators to conduct a similar, comprehensive analysis. The same concern also applies to the Proposed Rule, which may have the real effect of limiting access to risk mitigation tools and raising capital. A review of the initiatives impacting business capital formation illustrates:

- The Leverage Ratio Framework materially increases the minimum capital requirement by product relative to Basel III. Additionally, the Leverage Ratio Framework and the proposed Net Stable Funding Ratio penalizes many low-risk activities that may harm the ability of non-financial businesses to access markets to prudently mitigate risk or manage cash and liquidity;

- The Liquidity Coverage Ratio creates disincentives for financial institutions to offer certain products and services to businesses even though those activities were not the cause of the financial crisis;

- G-SIB Capital Surcharges will force large internationally active banks to withdraw additional capital from productive capital formation streams;

- The complex regulatory regimes envisioned by the final Volcker Rule, and the proposed Vickers and Bank Structural Reform rules, are expected to impact the ability of non-financial businesses to enter the debt and equity markets by raising costs and creating barriers of entry to the capital markets;

- Money Market Fund reforms will harm the ability of non-financial businesses to access the short-term commercial paper markets and manage cash;

- If the Volcker, Vickers and Bank Structural Reform, and Money Market Fund reforms hamper capital formation, the next alternatives are commercial lines of credit; however, Basel III creates disincentives for banks to provide businesses with commercial lines of credit;

- The TLAC proposal will immobilize billions of dollars' worth of capital through its long-term debt requirements while requiring banks to hold many multiples of the capital needed in several of the Federal Reserve's stress testing scenarios;

- The Countercyclical Capital Buffer requirement requires G-SIBs to raise an additional cash buffer when the Board believes there is excess credit growth in a particular sector of the economy, which has already sidelined productive capital; and

- The Single Counterparty Credit Limit rules may significantly curtail lending to small and mid-size businesses given the operational difficulty of aggregating counterparty exposures as envisioned by the Board. The proposal may also impact the health of the securitization markets through its various "look through" requirements without a readily apparent benefit to financial stability.[17]

The combination of all of these initiatives could lead to an underperforming financial sector and create barriers to capital formation. The inability of businesses to be able to engage in normal capital formation activities, efficient cash management and effective risk management will raise costs and create inefficiencies, adversely impacting economic growth and financial stability.

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[17] This list is by no means an exhaustive list of regulations and capital initiatives that should be reviewed with such a study. This list is illustrative of the types of initiatives that should be studied.

Therefore, we believe that the Federal banking regulators should conduct a comprehensive study to determine: (1) how all of these initiatives will interact and work together; (2) determine the impacts of these initiatives upon the broader macro-economy; and (3) use modeling techniques to "war-game" these new regulatory structures identify faults and shape comprehensive fixes. This information will be invaluable to the finalization of the Proposed Rule and would help mitigate potential unintended consequences with the other initiatives discussed above, as well as how the final rule should be molded to avoid potential harm to the ability of businesses to raise the resources needed to expand and operate.

Additionally, the Federal Reserve, FDIC and OCC have overlapping, but not identical legal obligations and internal practices for economic analysis when promulgating a rule. All of the regulators are subject to the Regulatory Flexibility Act ("RFA") and the Paperwork Reduction Act ("PRA"). The RFA requires assessment of the economic effect of regulations on small business and consideration of less burdensome alternatives. The PRA requires assessment of the paperwork burden on small entities and ways to reduce or mitigate it.

All of the regulators must also comply with the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Among other things, the portion of SBREFA known as the Congressional Review Act states that rulemaking agencies must submit to GAO, and make available to each house of Congress, "a complete copy" of any cost-benefit analysis prepared for a final rule for which such an analysis is performed.[18]

Additionally, all of the regulators are subject to Riegle Community Development and Regulatory Improvement Act ("Riegle Act," 12 U.S.C. §4802(a)). 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

[18] 5 U.S.C. 801(a)(1)(b)(i))

place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."

It is also important to note some of the other economic analysis requires that the regulators observe, or at least claim to observe, when promulgating rules. For example, the OCC observes the Unfunded Mandates Reform Act (UMRA) economic analysis requirements in its rulemakings.[19] Although the Federal Reserve is an independent agency, it has also avowed that it will seek to abide by Executive Order 13563. The Federal Reserve recently stated that it "continues to believe that [its] regulatory efforts should be designed to minimize regulatory burden consistent with the effective implementation of [its] statutory responsibilities."[20] As recently as October 24, 2011, the Federal Reserve wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and asserting that the Federal Reserve's use of such an analysis, since 1979,[21] has mirrored the provisions of regulatory reform as articulated in Executive Order 13563.[22]

The CCMC strongly recommends that all of the banking regulators establish a baseline for cost-benefit and economic analysis using the blueprint established by Executive Orders 13563 and 13579, in addition to other requirements they must follow.[23] Doing so would allow meaningful, cumulative analysis that would result in a more coherent final rule with fewer harmful, unintended consequences for the American economy.

Executive Order 13563 places upon agencies the requirement, when promulgating rules to:

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[19] *See* Final Volcker Rule, SEC, at 882, available at http://www.sec.gov/rules/final/2013/bhca-1.pdf.
[20] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.
[21] Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979)
[22] *See* letter from Scott Alvarez, General Counsel of the Federal Reserve, to Nicole Clowers, Director of Financial Markets and Community Investment of the General Accountability Office.
[23] Executive Order 13579 requests that independent agencies follow the requirements of Executive Order 13563.

1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to justify);

2) Tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity);

4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made to the public.[24]

Additionally, Executive Order 13563 states that "[i]n applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."

Conducting the rulemaking and its economic analysis under this unifying set of principles will facilitate a better understanding of the rulemaking and its impact and give stakeholders a better opportunity to provide regulators with informed comments and information.

[24] Executive Order 13563

We believe that a full consideration of these conclusions should guide the Federal banking regulators in their consideration of the comments to the Proposed Rule.

Conclusion

We have highlighted several concerns with the Proposed Rule and its impact on the capital markets, particularly with respect to continued access to cost-effective risk mitigation techniques and raising capital. In particular, we believe that the Federal banking regulators must take significant steps to make the NSFR more risk-sensitive, while also eliminating requirements such as the 20% counterparty payables "add-on" that will essentially serve as a tax on nonfinancial corporate trades. We raise these issues again in the context of the need for a rigorous cost-benefit analysis to determine the impact of heightened capital and liquidity requirements on covered financial institutions and their counterparties. We thank you for your consideration of these comments and would be happy to discuss these issues further with you or your staff.

Sincerely,

Andres Gil