CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

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Ms. Jennifer J. Johnson
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
100 F Street, NE
Washington, DC 20549-1090

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

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds. Docket No. OCC-2011-0014, RIN 1557-AD44; Docket No. R-14, RIN 7100 AD; RIN 2064-AD85; Release No. 34, RIN 3235-AL07.

Dear Ms. Johnson, Mr. Feldman, Ms. Murphy, 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 provide input and comment on the proposed rule, ***Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds*** ("the Volcker Rule Proposal").

The CCMC supports the intent to limit irresponsible risk taking. We are concerned, however, that the Volcker Rule Proposal does much more than this. In doing so, it poses implementation issues and severe costs and burdens that threaten the efficient, competitive, and dynamic capital markets that foster effective capital formation and the job creation it engenders. While the CCMC will file additional comment letters[1] on the Volcker Rule Proposal, we write this letter to express concerns regarding the fractured, incomplete, inconsistent, and uncoordinated study of the economic impacts and costs and benefits associated with the proposed rule. We believe that if the flaws in the cost-benefit and economic impact analyses are not addressed, they may lead to the promulgation of a flawed final rule that has severe, unintended consequences for capital formation, the efficiency of capital markets, and the competitiveness of these markets. Accordingly, the Volcker Rule Proposal should:

- **Be considered under the requirements of Executive Orders 13563 and 13579 in order to coordinate different requirements across agencies for economic analysis and finalization of rules;**

- **Be considered an economically significant rulemaking and the public provided with a qualitative and quantitative analysis of the impacts upon the economy as required by the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Reform Act");**

- **Be subject to an enhanced Office of Information and Regulatory Affairs ("OIRA") regulatory review process; and**

- **Be considered in the context of other initiatives, such as Basel III, and other pertinent Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") rulemakings, when determining the economic impacts.**

The CCMC's concerns are discussed in greater detail below.

<u>Discussion</u>

[1] The Chamber has already sent two letters concerning this rule making: the first on October 11, 2011 to Secretary Geithner requesting the Financial Stability Oversight Council coordinate the Volcker Rule Proposal rulemaking because of the absence of the Commodity Futures Trading Commission and on November 17, 2011 requesting a withdrawal and re-proposal of the Volcker Rule Proposal at such time when all of the regulators could participate together in a joint rulemaking. This letter, as the previous letters, are bring submitted for the rulemaking record.

The proposed joint rule to implement the Volcker Rule was published in the *Federal Register* on November 7, 2011 and the comment period is set to close on January 13, 2012. The joint rule was proposed by the Federal Reserve, the Federal Deposit Insurance Corporation ("FDIC"), the Office of Comptroller of the Currency ("OCC"), and the Securities and Exchange Commission ("SEC"). The Commodity Futures Trading Commission ("CFTC") has not joined in the rulemaking, but plans to issue proposed rules at some point in the future.

A. Addressing Differing Standards by Coordinating Cost-Benefit and Economic Impact Analysis under Executive Orders 13563 and 13579

While the Volcker Rule Proposal must follow the requirements of the Administrative Procedures Act ("APA"), the Federal Reserve, FDIC, OCC, SEC, and CFTC each have differing legal standards and internal practices for economic analysis when promulgating a rule.

As an Agency of the Treasury Department, the OCC is the one agency involved in the joint Volcker Rule Proposal that is not an independent agency. While the next section of the letter will deal with the "economically significant" standard, the OCC must promulgate rules consistent with the OIRA process and Executive Order 13563.

The Federal Reserve is an independent Agency, but it has avowed that it will seek to abide by Executive Order 13563. Consistent with this approach, 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."[2]

The FDIC is an independent Agency, but it has stated that it plans to review the effectiveness of its regulations in accordance with Executive Order 13579. As part of this plan, the FDIC confirmed its obligation to "analyze a proposed rule's impact on depository institutions, customers of depository institutions, small depository institutions, and industry competition [as well as] the effects on banks and their ability to raise capital." [3]

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[2] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.
[3] FDIC's Plans to Review Existing Regulations for Continued Effectiveness (November 10, 2011), available at http://www.fdic.gov/regulations/laws/plans/index.html.

The SEC is also an independent Agency, but when promulgating rules, it must consider specific issues designated by the Securities Exchange Act ("Exchange Act"). For example, under Section 3(f) of the Exchange Act, the SEC is required to consider or determine whether an action is necessary or appropriate to advance the public interest in protecting investors and if a regulatory action will promote efficiency, competition and capital formation.[4] Additionally, Section 23(a)(2) of the Exchange Act requires the SEC, when adopting a rule, to take into consideration the impacts of proposed rule upon competition.[5] These requirements apply to those portions of the Proposal, besides the Bank Holding Act, that are related to registered broker dealers and security based swap dealers. Moreover, the Volcker Rule will impact the financing of the very public companies whose investors it is the SEC's primary mission to protect. In addition to these considerations, the SEC is attempting to follow Executive Orders 13563 and 13579 by requesting comment on retrospective analysis of the costs and benefits of its regulations while soliciting comments on means of improving rulemaking.[6]

While the CFTC did not adopt the joint rulemaking or separately issue its portion of the Volcker Rule, it is expected to do so at some point. The CFTC must take several factors into consideration when it analyzes the costs and benefits of proposing a rule. These include considerations related to protecting market participants and the public. The CFTC must also consider whether a rule promotes the considerations of the efficiency, competitiveness, and the financial integrity of futures markets. The CFTC is also obliged to ensure that its rules do not impair the price discovery functions of the markets, and that they are consistent with considerations of sound risk management practices and other public interest considerations.[7]

Therefore, the standards and considerations of costs and benefits and economic impacts vary across the agencies involved in the Volcker Rule Proposal.
Given this haphazard and uncoordinated analysis under existing practices, CCMC recommends that all of the agencies involved in the Volcker Rule Proposal establish a common baseline for cost-benefit and economic analysis by using the blueprint established by Executive Orders 13563 and 13579, in addition to other requirements they must follow.[8]

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[4] 15 USC 78c (f)
[5] 15 USC 78w (a) (2)
[6] See SEC Press Release 2011-178, September 6, 2011.
[7] 7 USC 19.
[8] Executive Order 13579 requests that independent agencies follow the requirements of Executive Order 13563.

This would allow meaningful, cumulative analysis that would result in a more coherent final rule with fewer harmful, unintended consequences for America's capital markets.

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

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.[9]

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.

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[9] Executive Order 13563

B. Economically Significant Rulemaking and OIRA Review

As stated earlier, the OCC is the only agency involved in the rulemaking that is not an independent agency. As such, the OCC must determine pursuant to the Unfunded Mandates Reform Act (UMRA) if the rulemaking will cost state, local, or tribal governments or the private sector more than $100 million. If it does, the OCC must submit the rulemaking for an enhanced review and provide estimates of future compliance costs, impacts upon the economy—including data on productivity, jobs, and international competitiveness.[10]

The OCC has stated that the Volcker Rule Proposal is not an economically significant rulemaking[11]. This is an incredible assertion with which we take issue. In contrast to the OCC's outright rejection of the idea that the Volcker Rule Proposal is an economically significant rule, the SEC has at least requested information from commenter's before deciding if this is an economically significant rulemaking. Under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), if a rule is economically significant, the SEC must perform an analysis similar to that required by UMRA.[12]

We have no doubt that the Volcker Rule Proposal is an economically significant rulemaking, with costs of more than $100 million, requiring enhanced review. Indeed, the agencies themselves estimate that compliance alone will require 6 million hours. The additional issues listed below are merely illustrative, and by no means exhaustive, yet show that the costs are well above the $100 million threshold triggering enhanced review.

The definition of exempt state and municipal securities is narrower under the Volcker Rule provisions of Dodd-Frank than under the Securities and Exchange Act of 1934. This will subject municipal securities issued by municipalities and authorities to Volcker Rule provisions, impacting underwriting, market making, and subjecting state and local governments to increased financing cost, reduced access to the capital markets, and reduced liquidity in the secondary market. With over $3.6 trillion in outstanding State and Local obligation and revenue bonds, the impacts upon these entities will be well over $100 million. Since these bonds are critical to capital programs such as infrastructure improvements and

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[10] See 2 USC 1501, et. seq.

[11] See ***Federal Register*** Volume 76, No. 215, 68939, Monday, November 7, 2011.

[12] It should also be noted that the Small Business Administration recently filed a comment letter taking exception with the cost benefit analysis conducted by the SEC in the Conflict Minerals rulemaking related to Section 1502 of the Dodd-Frank Act. Accordingly, this SBREFA review should be taken seriously by regulators.

school construction, these cost impacts upon state and local governments, in a difficult fiscal environment, should be taken into serious consideration by the regulators. For these reasons, the agencies should interpret "obligations of a State or any political subdivision thereof" under the Government Obligations exemption to include all municipal securities as defined in the Securities Exchange Act of 1934.

While much of the focus of the Volcker Rule Proposal has been on financial institutions, there are significant costs to non-financial companies that have not been contemplated by the regulators. To illustrate these impacts, included as an appendix to this letter is a survey that uses 2010-2011 historic data, of select U.S. financing companies that provide services for non-financial businesses. It appears that the Volcker Rule will impose at least a five basis point increase in bid-ask spreads. In a confidential survey of five large U.S. borrowers, it estimates that under the Volcker Rule Proposal increase in the bid-ask spreads will be closer to 25-50 basis points increasing lending costs from between $742 million and $1.483 billion. In reviewing Volcker Rule impacts upon potential lending strategies for smaller less frequent borrowers, hypothetical scenarios suggest an increase in bid-ask spreads will be closer to 50 and 100 basis points leading to increased lending costs of between $106 million and $211 million.

Also, in discussions with our membership it appears that there will be an impact upon switching transactions—the process whereby a financial institution buys back some of an issuer's older bonds as part of the process for a new issuance. For example, a 10 basis point increase caused by the Volcker Rule would increase the costs of switching transactions by $2.8 million per billion while a 50 basis point increase would drive up costs by nearly $14 million per billion.

Taken together, by extension, with $8 trillion of corporate debt outstanding and that approximately $7 trillion trades in a year, the incremental transaction costs for investors and financing costs for U.S. companies could total into the tens of billions of dollars.

These discussions with our members provide a snap shot of potential costs facing non-financial companies because of just one provision of the Volcker Rule Proposal. Other provisions will also markedly affect liquidity in the financial markets and will increase the costs associated with raising funds for both financial and non-financial firms throughout the economy.

Additionally, financial companies and non-financial companies that own banks will have to build Volcker Rule Proposal compliance programs that will be costly on a start-up and ongoing basis.

Because there is ample reason to believe that the costs that would be imposed by the proposed Volcker Rule to state and local governments and the economy are well over $100 million, the OCC should submit the proposed rule to an OIRA regulatory review process. The Federal Reserve, FDIC, SEC, and CFTC should also voluntarily submit their portions of the Volcker Rule Proposal for an OIRA regulatory review process.

C. Interaction with Other Initiatives and Regulations

The Volcker Rule Proposal is also not being drafted or considered in a vacuum. It is being developed during a period when the Dodd-Frank Act is being implemented and international capital standards are being re-written—the cumulative impacts of these developments must be viewed on a broad holistic basis.

As just one example, mid-cap and small-cap companies may find it increasingly hard to access debt markets because of widening bid-ask spreads and administrative costs. This will force these companies to access bank lending at the same time that Basel III is attempting to lessen risk in granting loans, through increased capital requirements. Therefore, these companies could be shut out of opportunities to raise capital in both the debt and equity markets.

As another example, the Volcker Rule Proposal is requesting feedback on compensation packages and practices. Yet these same financial regulators are currently considering a rulemaking on incentive compensation designed to lessen inappropriate risk taking.[13] It seems possible that regulators could develop rules or policies that are inconsistent. To avoid conflicting policies, regulators should take into account the incentive compensation rulemaking when examining compensation and proprietary trading. A failure to do so could make compliance difficult, if not impossible.

[13] Currently the SEC, Federal Reserve, OCC, FDIC, Office of Thrift Supervision, National Credit Union Administration and Federal Housing Financing Agency are considering a rulemaking under Section 956 of the Dodd-Frank Act regarding incentive compensation arrangements.

Again, this is but a small portion of the current universe of Dodd-Frank Act and other financial rulemaking and does not even take into consideration the CFTC's impending Volcker Rule Proposal. Any effort that seeks to ensure that our capital markets remain, efficient, competitive, and accessible must take such collateral considerations into account to allow for logical and consistent rules that provide for a rational means of compliance.

Conclusion

CCMC is very concerned that the Volcker Rule Proposal, in its current form, has inadequately considered the costs and benefits associated with the proposed rule. The proposed rule fails to acknowledge its true costs and impacts upon the economy. This has the potential to distort and corrupt analysis of the proposed rule to such a degree that any final rule will be replete with errors, omissions, and unintended consequences. The resultant harm may fall most heavily on non-financial companies of all sizes because a flawed rule is likely to restrict their opportunities for capital formation, which can, in turn, impede job creation and economic recovery.

CCMC is available to discuss these issues with you further.

Sincerely,

David Hirschmann

David Hirschmann

Attachment

cc: The Honorable Gary Gensler, U.S. Commodity Futures Trading Commission

Annual Term Debt Funding Cost Analysis

Center for Capital Markets Competitiveness

Based on the 2010-2011 historical funding of select large U.S. borrowers and assumed funding strategies for three hypothetical small U.S. borrowers, below is an analysis of the funding cost impact due to a widening of bid / ask spreads.

Illustrative Funding Cost Analysis: Annual Term Debt Issuance of Select Large U.S. Borrowers[1]

Issuer	Weighted Average Maturity	Weighted Average Coupon[2]	Modified Duration	2010-2011 YTD Issuance	2011-2011 YTD Total Cost Impact of +25 bp Increase	2011-2011 YTD Total Cost Impact of +50 bp Increase
Finance Company	7.5 Years	3.180%	6.5 Years	$30.4bn	+$498.7mm	+$997.5mm
Automotive Finance	5.3 Years	2.267%	4.8 Years	$10.1bn	+$122.1mm	+$244.1mm
Captive Finance	5.0 Years	2.055%	4.7 Years	$5.8bn	+$68.0mm	+$135.9mm
Captive Finance	3.5 Years	1.607%	3.4 Years	$5.2bn	+$43.3mm	+$86.5mm
Aircraft Finance	5.8 Years	2.383%	5.3 Years	$0.8bn	+$9.9mm	+$19.8mm
Total	--	--	--	**$52.3bn**	**+$742.0mm**	**+$1,483.8mm**

(1): Funding cost analysis includes USD-denominated debt issued since January 1, 2010
(2): Includes floating-rate note coupons at current spreads over Libor
Sorted by decreasing annual total impact, then total

Illustrative Funding Cost Analysis: Annual Term Debt Issuance of Three Hypothetical Small U.S. Borrowers

	Assumed Weighted Average Maturity	Assumed Weighted Average Coupon	Modified Duration	Assumed Annual Funding Capacity	Annual Total Cost Impact of +50 bp Increase	Annual Total Cost Impact of +100 bp Increase
Company A	5.0 Years	3.750%	4.4 Years	$250mm	+$5.6mm	+$11.1mm
	10.0 Years	4.750%	7.7 Years		+$9.7mm	+$19.4mm
Company B	5.0 Years	3.875%	4.4 Years	$500mm	+$11.1mm	+$22.2mm
	10.0 Years	4.875%	7.7 Years		+$19.2mm	+$38.5mm
Company C	5.0 Years	4.000%	4.4 Years	$1,000mm	+$22.1mm	+$44.2mm
	10.0 Years	5.000%	7.7 Years		+38.3mm	+$76.5mm
Total	--	--	--	--	**+$106.0mm**	**+$211.9mm**

Note: Annual total cost impact is calculated based hypothetical annual funding capacities, weighted average maturities of debt issued and weighted average coupons of debt issued

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