CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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November 25, 2013

The Honorable Ben Bernanke
Chairman
Board of Governors of the
Federal Reserve
20th Street and Constitution Avenue
Washington, DC 20551

The Honorable Martin Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

The Honorable Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds. Docket ID OCC-2011-0014, RIN 1557-AD44; Docket No. R-1432, RIN 7100 AD 82; RIN 3064-AD85; Release No. 34, RIN 3235-AL07; File Number S7-41-11.

Dear Chairman Bernanke, Chairman Gruenberg, Chair White, Comptroller Curry, and Chairman Gensler:

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") issued by 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"), and the Commodities and Futures Trading Commission ("CFTC") (also collectively "the regulators").

The CCMC has previously written[1] expressing concerns that the Volcker Rule, as proposed, will have far reaching, negative consequences. Most importantly, the Volcker Rule proposal will impede the ability and increase the cost of non-financial businesses to raise capital and manage risk.

On November 7, 2013 the CCMC wrote to the regulators asking for a re-proposal of the Volcker Rule before it is finalized. The CCMC believes a re-proposal is necessary because many fundamental issues have been considered for the first time subsequent to the closing of the comment period. To be truly effective, public rulemaking requires a notice and comment period to allow key stakeholders a meaningful opportunity to comment on all aspects of what will be a substantially altered rule. It is likely that a whole new set of unintended consequences will arise from the completed Volcker Rule. We also note that since the close of the comment period there has been a number of significant developments that apparently affected the regulators efforts.

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[1] *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 and November 7, 2013 from the U.S. Chamber of Commerce to the regulators and FSOC.

We are compelled to write today because of concern regarding such a recent development. Namely, recent comments made by Federal Reserve Governor Daniel Tarullo that underline the need for a re-proposal. Press reports stated that on November 22, 2013, Governor Tarullo said at a public event: "One of the key mandates to the staff from all the five agencies working on the final rule has been to ensure that London Whale, in substantive and procedural terms, couldn't happen again."[2]

It should be noted first that the London Whale incident came to light in Spring 2013 after the comment period on the proposed Volcker Rule closed. After-the-fact reconfiguration of such a massive regulation without public comment and input would seem to run counter to the letter and spirit of the Administrative Procedures Act. We are confident that procedural deficiencies of this sort are not the intent of the regulators, and we urge a re-proposal to provide an opportunity to avoid procedural flaws that will ultimately delay the law's implementation.

Governor Tarullo's comments regarding this major regulatory recalibration raise substantive concerns as well. Portfolio hedging, which is an essential risk management tool key to insure liquidity of bank loans to businesses and commercial lines of credit, is a permitted activity under Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Changes to the Volcker Rule that will impact portfolio hedging could profoundly impact risk management practices within the industry. Since it appears that there has been a significant reformulation of the Volcker Rule to address events that have occurred since the notice of proposed rulemaking, and that could have a significant impact on banking practices, such revisions should be subject to public comment.

Therefore, it would appear that the scope and structure of the Volcker Rule has changed substantially since the Volcker Rule comment period closed in February 2012

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[2] Bloomberg News, November 22, 2013.

and that the regulators are attempting to address situations that were not subject to public scrutiny and comment.

By expanding the Volcker Rule, to include portfolio hedging, without public comment does not allow businesses to either consider the implications or communicate to regulators how capital formation will be affected. Inter-agency negotiations and selective press leaks are no substitute for the rigors of notice and comment rulemaking. Given the incomplete nature of the notice of the proposed rulemaking and the prolonged regulatory deliberations regarding the myriad questions that it posed, the process to date has created a "black box" of rule writing that could result in an unbridled exercise of regulatory power that can harm the economy, and run counter the standards of transparency and accountability that the Agencies have pledged to follow and which are required by law.

This expansion of the Volcker Rule, as reported in the press, may harm the non-financial businesses and hobble productive enterprises that contribute to economic growth and job creation. And we do not think the Agencies can expand the proposed Volcker Rule to address the London Whale without subjecting the substantive and procedural regulations Governor Tarullo mentioned to public comment. Therefore, we once again urge the Agencies to re-propose the Volcker Rule.

Sincerely,

David Hirschmann

David Hirschmann