

VIA E-MAIL

October 22, 2012

The Honorable Thomas J. Curry, Comptroller of the Currency
Office of the Comptroller of the Currency
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OCC – Docket ID OCC-2012-008
OCC – Docket ID OCC-2012-0009

The Honorable Ben S. Bernanke, Chairman
Board of Governors of the Federal Reserve System
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Room 2046
Washington, DC 20551
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Docket No. R-1430; RIN No. 7100-AD87
Docket No. R-1442; RIN No. 7100-AD87

The Honorable Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
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comments@FDIC.gov
FDIC-RIN 3064-AD95
FDIC-RIN 3064-AD96

Re: Regulatory Capital Rules:

Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios,
Capital Adequacy, Transition Provisions, and Prompt Corrective Action; Proposed Rule

Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure
Requirements

Gentlemen:

Mercantil Commercebank, N.A. (the “Bank”) submits the following comments on the above joint notices of proposed rulemaking (“NPR”), which, together with a related NPR on advanced approaches to risk-based capital, are intended to implement the Basel Committee on Banking Supervision’s (“BCBS”) *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (December 2010) (“Basel III Accord”), consistent with provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹

We agree with recent comments from FDIC and Office of the Comptroller of the Currency (“OCC”) officials that the NPRs are unduly complex generally and may not offer the regulatory capital improvements sought. We are particularly concerned with the proposed treatment of trade-related transactions with foreign financial institutions, which comprise an important part of our business. These highly liquid, short-term, self-liquidating trade-related transactions are a traditional banking services, which facilitate international trade and job creation in the U.S. with minimal risks to U.S. domestic banks. The Bank has never had a loss on the transactions, even during global stressed economic and financial conditions. The NPR’s proposed risk weighting for these short-term, trade-related transactions will adversely affect our business and reduce our ability to compete with larger organizations that dominate this line of business

This letter focuses on the proposed rules for calculating the risk weight of loans to foreign banks related to trade finance. Among the stated objectives of the proposed changes are to “revise and harmonize the agencies’ rules for calculating risk-weighted assets to enhance risk sensitivity and address weaknesses identified over recent years, including by incorporating certain international capital standards of the BCBS”. The proposed treatment uses Country Risk Classifications prepared by the Organization for Economic Co-operation and Development (“OECD”). Presently, obligations of banks in OECD member countries have a 20% risk weight and all others are weighted at 100%. However, a very important exception is currently made for credits to non-OECD member country banks with respect to transactions with original maturities under one-year, which are permitted to be weighed at 20%

In our view, the Standard Approach NPR’s trade finance rules raises several concerns and does not appropriately consider the nature, tenor or actual risks of international trade finance:

1. The proposed rule ignores the tenor of the trade transactions -- a very important element of the risk undertaken. Trade-related bank transactions are short-term and self-liquidating, which creates liquid assets that are substantially less risky than other types of bank credit that typically have substantially longer terms and related uncertainties and risks. The NPR also ignores the history and experience with these

¹ The three NPRs are together titled *Regulatory Capital Rules* and individually subtitled “Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action” (“Basel III NPR”), 77 FR 52792 (August 30, 2012); “Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements” (“Standardized Approach NPR”), 77 FR 52888 (August 30, 2012); and “Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule”, 77 FR 52978 (August 30, 2012) (“Advanced Approaches NPR”).

instruments, and the actual levels of domestic banks' knowledge of the legal and socio-economic conditions of the foreign countries in which bank counterparties are located, the financial condition and quality of management of the foreign financial institution counterparties and the effectiveness and reliability of each country's bank regulatory framework.

2. Total reliance on the OECD Country Classifications may actually ignore the true credit risk profile of the counterparty. For example, a foreign financial institution with weak credit, but which is located in a strong OECD-rated country would require significantly lower capital support, and the opposite could easily occur. We believe that this strict reliance on the OECD Country Classifications may overly rely on the CRC rating, without appropriate consideration of specific bank counterparties.

The NPR also does not sufficiently consider the practicalities of the markets or the BCBS' *Treatment of Trade Finance under the Basel Capital Framework (October 2011)*, which concluded:

Other transactions, among which are short-term self-liquidating trade transactions, may also be eligible for exemption from the one-year floor, but subject to national discretion. It has been argued that the one-year maturity floor under the AIR is also inappropriate for short-term self-liquidating trade finance instruments given their average tenor of well below one year. 3 The Committee agreed, therefore, to base the calculation on the effective maturity for transactions with a maturity of less than one year. It believes that this should become the rule rather than an item left to national discretion.

The Committee further agreed to include, in the revised treatment, issued as well as confirmed letters of credit which are short term (i.e., have a maturity below one year) and self-liquidating. Other trade finance transactions which are not letters of credit can continue to be exempted from the one-year floor, subject to national discretion.

It agreed to waive the so-called sovereign floor for claims of the confirming bank on the issuing bank under option 2 of Basel II's standardized approach for credit risk in the context of short-term self-liquidating letters of credit. Under this approach, the exposure's risk weighting depends on the rating of the issuing bank. The risk weighting of an unrated bank is, in principle, 50% or even 20% for short-term claims (with an original maturity of three months or less). However, Basel II also states that the risk weighting cannot be lower than that which is applicable to the sovereign in which the bank is incorporated. For low-income countries, this would be 100%. Thus, the preferential risk weights for unrated banks under option 2 cannot be applied.

To make access to trade finance instruments easier and less expensive for low income countries, the Committee agreed to waive the sovereign floor for short-term self-liquidating letters of credit. This will allow banks to take advantage of the reduced risk weights. [Footnote omitted.]

We urge you to adopt national treatment with respect to international trade finance transactions and subject these to a 20% risk weight as expressly permitted by BCBS absent specific factors in specific transactions, where a higher risk weighting would be warranted. For example, transactions with undercapitalized institutions could be subject to a higher risk weighting.

Lastly, the proposed 90 day tenor ignores the International Chamber of Commerce's findings that trade finance transactions have a longer average tenor of 113 days. We believe the proposed rule's exception should be increased to up to 364 days, and in no event less than 270 days.

We have 25 years of experience in trade finance related loans to foreign banks in Latin America. This activity involves short term trade financing within tenors of 90 to 270 days as well as the issuance or confirmation of commercial letters of credit and other traditional banking transactions, such as the discounting of bankers acceptances. The majority of these transactions finance or facilitate imports and exports to and from the U. S. This economic activity provides key support in the development and promotion of commerce in the U.S., and is an important source of jobs in the areas of manufacturing, transportation, commerce and banking.

We maintain approximately 60 correspondent relationships with top-tier banks located in South and Central America. Our target countries are among the major regional economies such as Brazil, Chile, Peru, Colombia, Mexico, and Costa Rica. Some of these countries are investment grade rated and all enjoy consistently stable macroeconomic indicators. More importantly, these countries are among the United States' top trading partners in the hemisphere.

During the recent and all the other economic crises and downturns that have occurred in the U.S. and in Latin America in the last quarter of a century, our experience is consistent with the history of trade finance, generally. We have had no defaults, charge-offs or delinquencies in this business line. Because of its traditional and time tested commercial purposes, and our experience with these markets and transactions, this sector remains a very safe, stable and profitable banking activity that is helping to fuel the economic recovery, and provides important diversification to U.S. banks from geographic and lending concentrations in riskier credit transactions.

The Standardized Approach NPR Will Adversely Affect us and Similarly Situated Banks, the State of Florida and the U.S.

We are concerned that the significant increase in capital requirements to support these transactions will seriously jeopardize their profitability, especially if the cost of the additional capital cannot be passed on to customers. If the proposed risk weighting treatment is not uniformly adopted virtually simultaneously throughout the world, banks from countries that do

not adopt a similar regime will enjoy an artificial competitive advantage over U.S. banks. The NPRs will significantly increase our customers' costs and ability to obtain trade financing, as well as reduce competition in a market dominated by globally systemic institutions, and therefore further increase such institutions' interconnectedness.

The Standardized Approach NPR has a potentially chilling effect on world trade at a time when the economies of the U.S. and many foreign countries are showing little growth and are requiring significant, unsustainable monetary and fiscal stimulus. A study published by Enterprise Florida, Inc.² in March of this year highlighted the important role that international business has on Florida's economy:

- International business including both trade in goods and services as well as foreign direct investment accounted for about one-sixth (16.6%) of Florida's economy.
- Approximately 1.1 million jobs in Florida depend on international business.
- Roughly one out of six jobs (16.6 percent) in Florida is supported by international business – both trade and foreign direct investment, combined.

Latin America and the Caribbean are Florida's most important trade partners, accounting for 60% of the State's total merchandise trade (both imports and exports), far outweighing the next two regions; Asia and the Middle East, and Europe, at 19% and 16%, respectively. Any U.S. banking regulation which makes it more difficult or costly for foreign banks to serve their customers engaged in this important economic activity could threaten employment levels and our economic recovery.

Conclusions

We strongly encourage you to modify the proposed rule to continue affording short-term (less than one year), trade related transactions with foreign banks a 20% risk weighting commensurate with their significantly lower level of credit risk and demonstrated historical performance.

We believe that the unintended consequences of the NPR will harm to our U.S. and Florida economic recoveries and employment levels without improving the financial stability of the U.S. or global economy or the safety and soundness of individual banks. We believe that there will be significant negative spillover effects, particularly in manufacturing, trade and small businesses, other segments in which we also actively participate, and those adverse effects will harm our local business and increase the risks of our domestic business. Already, this business line is

² Enterprise Florida Inc. ("EFI") is a public-private partnership serving as Florida's primary organization devoted to statewide economic development. EFI accomplishes this mission by focusing on a wide range of industry sectors, including clean energy, life sciences, information technology, aviation/aerospace, homeland security/defense, financial/professional services, manufacturing and beyond. In collaboration with a statewide network of regional and local economic development organizations, EFI helps to improve Florida's business climate, ensuring the state's global competitiveness.

Mercantil Commercebank, N.A.
Comment letter to U.S. Regulatory Agencies on Basel III NPR
October 22, 2012

dominated by large systemically important banks, and the proposed capital rules are likely to further reduce competition and further concentrate risks in large, globally interconnected banks.

Respectfully

Millar Wilson
President and Chief Executive Officer

Cc: Ronald Lindhart, Assistant Deputy Comptroller
Office of the Comptroller of the Currency – South Florida Field Office