CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve
20th Street & Constitution Avenue, NW
Washington, DC 20551

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

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

Re: Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action; Standardized Approach for Risk-weighted Assets; Market Discipline and Disclosure Requirements; Advanced Approaches Risk-based Capital Rule. 12 CFR Parts 3,5,6,165, 167, Docket ID Nos.OCC 2012-0008, OCC 2012-0009, OCC 2012-0010, RIN 1557-AD46, 12 CFR Parts 208, 217 and 225, Regulations H, Q and Y, 12 CFR Parts 324 and 325, RIN 3064-AD95, RIN 3064-AD96, RIN 3064-AD97

Dear Ms. Johnson, Mr. Feldman and To Whom It May Concern:

The U.S. Chamber of Commerce ("the Chamber"), the world's largest business federation represents the interest of more than three million businesses and organizations of every size, sector, and region. The Chamber believes that appropriate capital requirements are necessary to avoid over-leveraging; however, capital standards that are too arduous can have serious, unintended negative consequences. Allowing suitable levels of risk-taking is a necessary element needed to fuel growth and innovation within the overall economy.

While the Chamber appreciates the extension of time to consider this proposal, we believe the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Federal Reserve"), and Federal Deposit Insurance Corporation ("FDIC") (also collectively as "the regulators") in releasing the

three notices of proposed rulemaking to implement the Basel III capital agreements ("Basel III NPRs") has failed to take into account critical aspects of how capital is used and, in some cases, has not paid sufficient attention to procedural detail.

Specifically, the Chamber's concerns are centered upon:

- **Failure to consider impacts on Main Street businesses and the economy;**
- **Enhanced cost-benefit and economic analysis needed before Basel III NPR's can be finalized;**
- **Resolution of conflicts with other legislative and regulatory initiatives;**
- **Impact of GSIFI surcharges placing U.S. firms at a competitive disadvantage;**
- **Uniform international application;**
- **Resolution of issues impacting Real Estate Investment Trusts that may depress the commercial real estate market; and**
- **Resolution of issues related to Trade Finance.**

Our comments and concerns are discussed in greater detail below.

Discussion

In November 2008, the Chamber released principles for regulatory reform that included a section on capital and liquidity standards, which states:

> [e]xtreme leverage is an issue that demands regulatory focus, given repercussions during periods of stress in our financial markets. Capital and liquidity requirements will need to be established for *all* significant financial institutions that can have an impact on the stability of our capital and financial markets. These requirements should encourage

meaningful prudence taking into account the firm's risk profile, while permitting critically necessary innovation and thoughtful risk-taking.

Accordingly, the Chamber believes that appropriate capital and liquidity requirements are the preferred means of preventing over-leverage and potential excesses in the financial services sector. In fact, the Chamber has consistently proposed capital requirements as a pro-growth alternative to the Volcker Rule. We appreciate the work the regulators have undertaken in establishing capital and liquidity requirements in the Basel III NPRs and in other initiatives including the yet to be completed application of capital and liquidity provisions of the Dodd-Frank Wall Street Reform and Consumer Protection ("Dodd-Frank Act"). The Chamber is concerned that the regulators, in proposing the Basel III NPRs, have not considered the implications of this rulemaking upon the non-financial business community and the broader economy. This is particularly concerning as capital and liquidity requirements that are *too high* are as dangerous as capital and liquidity requirements that are *too low*.

1. Failure to Consider Impacts on Main Street Businesses and the Economy

The regulators in proposing, finalizing, and implementing the Basel III NPRs must take into account the impact the rulemaking will have upon liquidity and capital formation for non-financial businesses. Financial institutions provide capital to businesses and serve as a conduit to match investors and lenders with entities that need funding. Banks, in particular, provide credit and lending that businesses use to expand and create jobs.

Therefore, how the Basel III NPRs impact the ability of financial institutions to lend and extend credit will have a direct bearing upon the ability of non-financial businesses to access the resources needed to operate and expand. In studying the Basel III NPRs, it would seem that the OCC, Federal Reserve, and FDIC are not taking these non-financial business and economic impacts into account.

A contemplation of these issues is critical to insure that financial institutions are acting as the conduit needed to prime the pump of economic growth. Lax capital standards can lead to inefficient allocations of capital that may result in a financial

crisis. Overly prescriptive rules and restrictive capital standards can dry up credit and lead to a similar inefficient allocation of capital, harming business and economic growth. This is particularly true with the fragile economic and job growth market that we currently have.

Similarly, stakeholders anticipated the regulators creating rules and systems for large banks, but not for smaller institutions. Such extension is significant as the Basel III NPR's will now have a large impact upon the credit and lending to Main Street businesses. It should be understood that large companies can access capital from many sources, including the vast debt and equity markets. Small businesses are more beholden to bank lending and credit. Applying the Basel III NPRs on smaller institutions will mean that Main Street businesses will face a disproportionate impact upon their ability to engage in capital formation.

Similarly standardized risk weights that punitively impact commercial lines of credit will have harmful consequences to the business community and their ability to operate in a way that is conducive to growth.

As will be discussed below, the failure to consider these effects on non-financial businesses, particularly small businesses, requires further analysis and public commentary before the Basel III NPRs can be finalized.

2. Enhanced Cost Benefit and Economic Analysis Needed Before Basel III NPR's can be Finalized

a. Compliance with Executive Orders 13563 and 13579 on Regulatory Reform

While the Basel III NPRs must follow the requirements of the Administrative Procedures Act ("APA"), the Federal Reserve, FDIC and OCC 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 Basel III NPR's 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 Office of Information and Regulatory Affairs ("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."[1]

Therefore, the standards and considerations of costs and benefits and economic impacts vary across the agencies involved in the Basel III NPRs. Given this haphazard and uncoordinated analysis under existing practices, the Chamber recommends that all of the agencies involved in the Basel III NPRs 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.[2] 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:

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);

[1] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.
[2] Executive Order 13579 requests that independent agencies follow the requirements of Executive Order 13563.

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.[3]

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.

b. Failure to Provide a Cost-benefit Analysis as Required Under the Unfunded Mandates Act

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.[4]

The OCC has stated that the Basel III NPR is not an economically significant rulemaking. We have no doubt that the OCC's Basel III NPR will have costs of more than $100 million and that it is an economically significant rulemaking requiring enhanced review. Either lending to businesses will be reduced, possibly by billions of dollars as a result of the Basel III NPRs, or the costs of bank lending will increase the

[3] Executive Order 13563
[4] See 2 USC 1501, et. seq.

costs for non-financial businesses. Similarly, the Basel III NPRs will place increased regulatory burdens and costs upon non-financial businesses that own financial institutions.

Accordingly, the Chamber believes that an UMRA enhanced cost benefit analysis must be undertaken and put out for comment before the Basel III NPRs are finalized.

c. Information Collection and OIRA Review

The Basel III NPRs exclude any information regarding the burdens that affected institutions face in terms of information collection process to comply with the proposals. Clearly, information gathering and collection is necessary to implement and enforce the Basel III NPRs and such a collection process by definition creates costs and burdens. Yet estimates are not provided for commentators to assess. Accordingly, the Chamber believes that the Basel III NPRs should undergo an OIRA information collection review and for that data to be released and subject to public comment. Failure to do so inhibits the ability of stakeholders to understand the proposal and provide the regulators with informed commentary that can improve the Basel III NPRs.

3. Resolution of Conflicts with other Legislative and Regulatory Requirements

a. Study of the Comprehensive Impacts and Interaction of Basel III NPR's with Other Regulatory and Legislative Initiatives

The Basel III NPRs are not being drafted or considered in a vacuum. They are being developed during a period when the Dodd-Frank Act is being implemented and other regulatory changes are taking place with profound impacts upon the ability of businesses to raise capital. As an example, the one place where many of these issues conjoin is within corporate treasury function of a business. From that vantage point, the Basel III NPRs will impact lending and commercial lines of credit for a business; the Volcker Rule will affect a treasurer's ability to raise capital in the debt and equity markets; and derivatives regulations will have a bearing upon their ability to mitigate risk, while the much discussed money market fund initiatives will harm the

commercial paper market and impede the capabilities of treasurers to engage in sound, cash management. Therefore, the development of international capital standards and the cumulative impacts of these developments must be viewed and understood on a broad, holistic basis.

b. Derivatives End-User Exception

The Chamber has strong concerns that the Basel III NPR[5] may harm end user companies that rely on over the counter ("OTC") derivatives to prudently managing their business risks.

In drafting Title VII of the Dodd-Frank Act, Congress acknowledged the important role derivatives play in mitigating end-users' commercial risks and the corresponding benefit the economy derives from such activity. To ensure OTC hedging remained efficient for end users, Congress crafted an end-user exception from the clearing and trading requirements of Title VII. Further, policy makers have repeatedly emphasized the importance of implementing a derivatives regulatory regime that promotes, rather than discourages, risk management activity by end-users.

The Basel III NPR would significantly undermine Title VII's end-user exception because dealers would be required to hold significantly increased amounts of capital against all uncleared swaps, making uncleared swaps transactions more expensive and driving up the cost of hedging. The Chamber urges the regulators to amend the Basel III NPR to ensure it does not conflict with the end-user exception and the unambiguous intent behind it by making clear that the new CVA capital requirements do not apply to transactions executed with end users when those end users are hedging commercial risk.

c. The Volcker Rule

The Chamber appreciates the intent of the regulators' inclusion of a discussion in the Basel III NPRs regarding the impact that the Volcker Rule may have upon the capital held by covered institutions. However, it is not possible to give any informed

[5] Specifically, "Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule"

commentary on those provisions because the implementing regulations for the Volcker Rule have not been completed. Accordingly, we would request that this portion of the Basel III NPRs be reopened for comment upon the completion of the Volcker Rule. The Chamber also believes that such a re-opening of the Basel III NPRs should also include a broader reconsideration of the inter-play between the Volcker Rule and the Basel III NPRs, primarily taking into account the fact that American institutions are subject to the Volcker Rule and the resulting capital adjustments, while their international competitors are not covered by the Volcker Rule or subject to the capital adjustments resulting from its operation.

d. Calculation of Risk Weight Averages and Definition of Securitization

The Chamber is concerned that the calculation and proposed use of risk weight averages may either have distortive impacts upon similarly situated firms. This may create conditions conducive for arbitrage and a lack of certainty that will make the capital markets less able to assess risk and efficiently deploy resources. For example, the Chamber is extremely concerned that standardized risk weights that punitively impact commercial lines of credit will have harmful consequences to the business community. Additionally, definitions and treatment of securitization may conflict with the Dodd-Frank Act. This failure to coordinate yet to be finished regulations may harm those markets and impose additional costs on businesses through due diligence requirements that may be unrealistic. These adverse consequences for securitizations may further damage those markets that are critical to business lending and have yet to recover from the 2008 financial crisis.

4. Impact of GSIFI's Surcharges Placing U.S. Firms at a Competitive Disadvantage

The Chamber has strong concerns over the possible imposition of capital surcharges upon Global Systemically Important Financial Institutions ("GSIFIs"). We believe that appropriate capital requirements are necessary to avoid over-leveraging and allowing suitable levels of risk-taking needed to fuel growth and innovation within the overall economy. However, capital surcharges upon GSIFIs come in addition to the Volcker Rule, other Dodd-Frank Act provisions including derivatives regulation, resolution authority and systemic risk regulation, as well as

other capital requirements could disrupt that balance placing American financial institutions at a competitive disadvantage. Such a competitive disadvantage may result in raising the cost of capital for *all* businesses and creating a drag on economic growth.

Therefore, the Dodd-Frank Act places both higher capital standards ***and*** the Volcker Rule ban on proprietary trading upon American financial services firms.

American GSIFIs will face an array of regulatory tools and procedures to prevent inappropriate risk taking that their global competitors may not, while not being able to engage in activities that other global firms may.

In such an atmosphere, the imposition of a GSIFI capital surcharge on American financial institutions may place them at a further economic disadvantage, create a drag on our financial services sector, and raise the costs of capital for businesses. These unintended consequences could have ramifications throughout the rest of the economy. An underperforming financial sector will make it more difficult for businesses to raise capital in an increasingly competitive global economy, adversely affecting economic growth and job creation. We believe that the impacts of a GSIFIs capital surcharge, upon the financial system and economy, should be studied before any proposals are implemented.

5. Uniform International Application

Recent reports have suggested that the European Union is contemplating delaying the implementation of Basel III because of the continuing pressures of the Sovereign Debt Crisis. The Chamber understands that a financial crisis may not be the best time to implement a new system of regulations. Nevertheless, as Basel III has been developed as a uniform international system it should apply to all simultaneously, and any delay for one segment of the global financial system should then delay the implementation of the system for all participants.

Similarly, uniform capital rules are only homogeneous if their interpretation, application and enforcement are the same across the board. As an example, differences among national regulators as to the quality of capital that must be held to satisfy Basel III requirements will in fact mean that there is no global uniform set of

capital rules. Mechanisms are needed so the interpretation and application of the Basel III rules are the same and followed across the board. Failure to do so will create regulatory capital arbitrage and gaps in the overall financial regulatory architecture.

6. Resolution of Issues Impacting Real Estate Investment Trusts that may Depress the Commercial Real Estate Market

Real Estate Investment Trusts ("REITS") are an important part of the commercial real estate market that is critical for businesses to have a place to operate. Regulatory initiatives that may restrict the operations or capital flows for REITS can drive up costs or have more harmful consequences for businesses. As mentioned earlier, punitive definitions of securitizations and applications of risk weights have a disproportionate impact upon REITS, and therefore on the commercial real estate markets that are a key part of the infrastructure needed for the business community to operate. These issues need to be resolved to prevent possible dislocations to the commercial real estate markets and the collateral adverse impacts that will be felt throughout the business community.

7. Resolution of Issues Related to Trade Finance

As currently drafted, the Basel III NPRs may seriously reduce the availability of trade finance and will significantly increase the cost of these crucial products. Specifically, implementation of a supplementary leverage ratio will have a disproportionately large impact on off-balance sheet trade finance positions, and the proposed calculation of the Asset Value Correlation (AVC) can increase the cost of trade finance to the end user. The application of both these proposals is disproportionate to the low risk nature of trade finance instruments. Additionally, greater clarity is needed on the waiver of the one-year maturity floor for trade finance instruments to ensure all short-term, self-liquidating trade finance products are able to use actual tenor in their capital calculation relative to maturity.

Further, small and medium-size enterprises (SMEs) have a crucial role to play in driving economic recovery, and they rely heavily on trade finance. Unfortunately, the U.S. capital proposals have the potential to harm these important firms the most.

Conclusion

The Chamber believes that a balanced approach to capital and liquidity requirements are a pro-growth means of addressing over-leveraging and providing stability in a risk based free enterprise system. The concerns expressed in this letter are primarily centered upon a lack of information that prevents informed commentary and a failure by the regulators to contemplate capital requirements in the sense of the broader macro impacts upon business lending and the economic growth and job creation that results from such activity.

The Chamber believes that a deeper understanding of those issues by regulators, including a universal application, implementation and enforcement of Basel III standards, by all signatories, is integral for these international standards to be effective. The Chamber believes that the regulators also need to address issues related to the broader application of the Basel III standards and how they will impact Main Street business lending. The inclusion of many smaller banks, not originally contemplated by market participants, in the Basel III NPRs may have negative impacts upon Main Street businesses and their growth potentialities. Accordingly, these issues should be addressed before any of the Basel III NPRs are finalized.

Also, increased rigor in the consideration of the Basel III NPRs through an enhanced cost-benefit analysis and compliance with Executive Orders 13563 and 13579 will allow the regulators the ability to consider the current gaps of the Basel III NPRs including the failure to consider impacts upon lending to nonfinancial businesses and the broader economic impacts of the proposals. Finally, an overall study of the comprehensive impacts of the Basel III NPR's and their interaction with other regulatory and legislative initiatives, such as the Dodd-Frank Act, is needed for all stakeholders and regulators to understand if these capital and liquidity standards can be effective and not cause economic harm.

Thank you again for the opportunity to comment upon the Basel III NPRs. We are happy to discuss these issues and others related to the Basel III NPRs in greater detail at your convenience.

Sincerely,