August 5, 2016

Via Electronic Mail

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Attention: Legislative and Regulatory Activities Division
Docket ID OCC—2104—0029; RIN 1557—AD97

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Robert E. Feldman, Executive Secretary
RIN 3064—AE 44

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Robert deV. Frierson, Secretary
Docket No. R—1537; RIN 7100 AE-51

Re: Comments in Response to the Notice of Proposed Rulemaking – *Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements*

Ladies and Gentlemen:

The Commercial Real Estate Finance Council, Institute of Real Estate Management, National Apartment Association, National Association of Real Estate Investment Trusts, National Association of Realtors, National Multifamily Housing Council, and The Real Estate Roundtable (collectively, "the Associations")[1] appreciate the opportunity to comment on the joint notice of proposed rulemaking of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Board of Governors of the Federal Reserve System ("Federal Reserve", together with the OCC and the FDIC, the "Agencies") which seeks to implement the Basel Committee on Bank Supervision's Net Stable Funding Ratio

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1 See Annex A for descriptions of Associations.

("NSFR") requirement in the U.S. In this letter, the Associations will concentrate on the rule as it impacts the commercial real estate finance ("CRE") sector.[2]

We are concerned about the impact that the NSFR requirement will have on commercial real estate credit capacity – particularly in view of the overlapping financial regulatory changes under Dodd-Frank Wall Street Reform and Protection Act ("Dodd-Frank") and Basel III that are now beginning to manifest. The cumulative effect of these measures is that "market liquidity" [3] has been severely constrained and this may result in unduly diminished capital availability and economic growth.

The Associations support the Agencies' efforts to address any remaining liquidity risks in the system through the NSFR and other supervisory tools, but with the proviso that those additional regulatory interventions not cause more harm than good. More specifically, the flow of capital to borrowers should not be compromised by heightened capital and liquidity requirements for banking entities. The Associations also support the comments expressed in the letter submitted by The Clearing House, et al, ("Industry Letter"), which outlines certain similar concerns with the NSFR framework relating to both the construction and the potential outcomes of the proposed rule.

Primary Goals and Applicability of the Net Stable Funding Ratio

Reduced to its simplest form, the primary goal of the NSFR is to increase the duration of the liability side of the balance sheet. This is a reasonable response to the crisis, yet the NSFR requirements as proposed appear to be punitive and may overshoot optimal targets.

As currently constructed, the NSFR appears to be highly disruptive to non-sovereign guaranteed traded instruments and to derivatives, both those that are cleared and traded over-the-counter ("OTC"). Focusing on the CRE sector, the NSFR would have implications for Commercial Mortgage Backed Securities ("CMBS"), the Commercial Mortgage Backed Index ("CMBX") [4] and whole CRE loans.

Taking CMBS first, the rule applies a punitive "required stable funding" ("RSF") factor to the asset class and also a stringent "available stable funding" ("ASF") factor to securitization's most common form of financing, repurchase agreements ("repos"). In addition, as the Industry Letter points out, repos and reverse repos are treated asymmetrically, which increases the magnitude of the shock, and by extension, the disruption to the business case for participation in the CMBS market. As such, the rule applies pressure on the asset class in both the numerator

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[2] See Appendix B for a description of how the NSFR treats CRE products.

[3] The term "market liquidity" in this context is used to refer to liquidity in secondary, traded markets. While the secondary markets may appear to be less significant than primary markets, which are the source of capital and credit for borrowers, they have a significant impact on the primary markets. A noted elsewhere in this letter, there are several rules in place that affect the CMBS market and to take it as an example, regulatory burden and uncertainty greatly contributed to volatility earlier in the year and to a dramatic contraction in issuance. Recent forecasts for 2016 issuance stand at roughly 50 – 60 percent of the forecasts published at the beginning of the year.

[4] The CMBX is currently traded as an OTC instrument, but it is likely that it will be cleared shortly after margin rules go into effect on September 1, 2016.

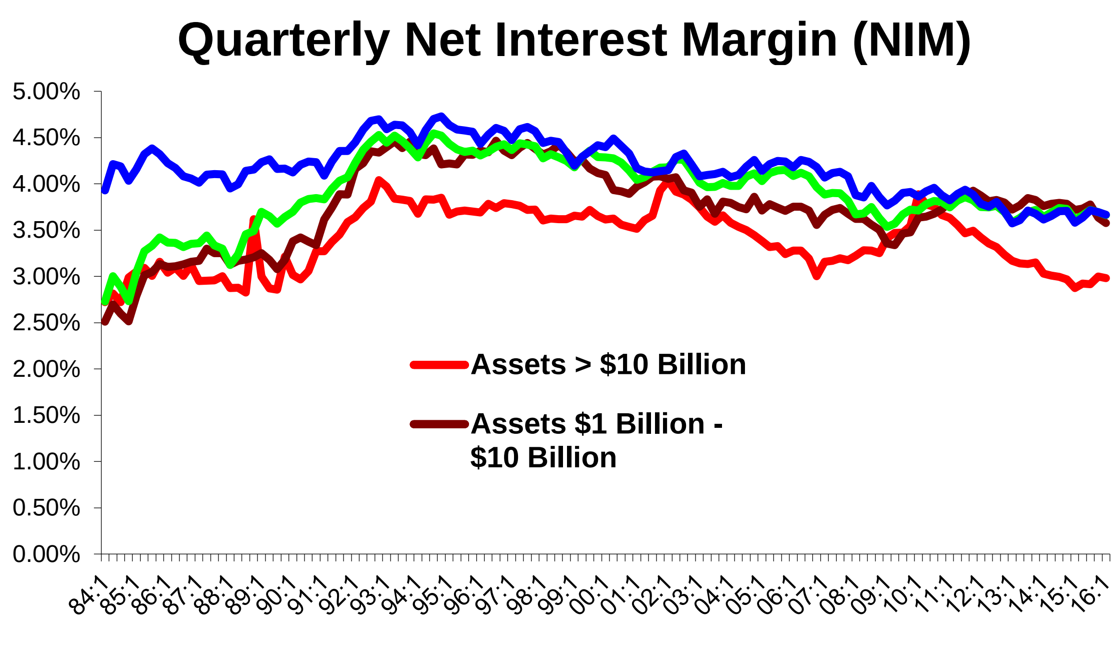
and the denominator. Additionally, there are legacy challenges to the CMBS business case that were generated by the liquidity coverage ratio ("LCR") through the "highly qualified liquid assets" ("HQLA") framework that was continued through and also incorporated in the NSFR.

The application of the NSFR to CMBX is more complex, applying different treatment to initial and variation margins. Again the proposed rule also applies asymmetrical treatment to long and short positions. Lastly, there is a concern that the treatment of cash collateral is not well reasoned and may act as a disincentive for central clearing, which is another important principle behind the post-crisis regulatory agenda.

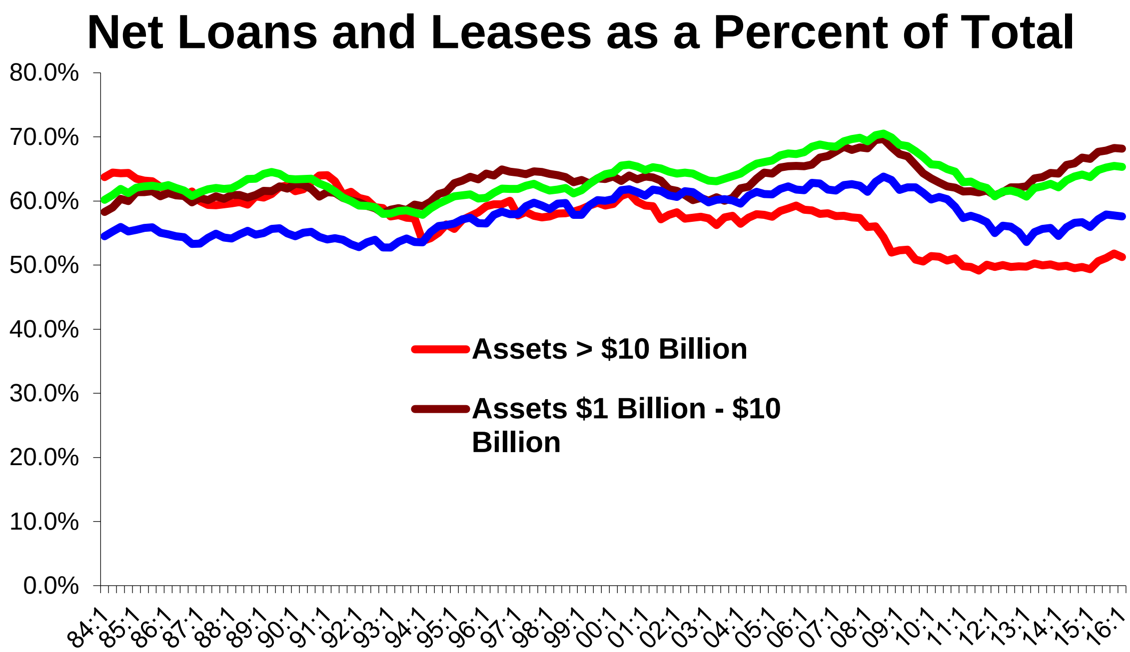
On the whole loan front, the proposed rule applies a stringent treatment of CRE loans, but is in line with other commercial products. It also is less disruptive to the numerator, or the ASF factor, by virtue of the fact that loan businesses have historically been funded by relatively longer-term instruments than have investment banking and trading businesses.

Estimated Magnitude of Impact

Looking across all of the requirements in the proposed NSFR, there will be considerable balance sheets movements on the asset and the liability sides of the balance sheet for many large banks. Ultimately, the rule will encourage banks to invest relatively more of their assets in so-called "HQLAs" and in a more concentrated set of liabilities than is practical now. These trends are already occurring, largely due to overlapping regulation, and the result is net interest margin compression, especially for larger banks.



Source: Federal Deposit Insurance Corporation



Source: Federal Deposit Insurance Corporation

In a research note published by The Clearing House in July 2016,[5] the authors conclude that the NSFR as currently drafted will lead to a decline in loan growth from 4.0% to 0.5% per annum. Clearly this signals that the rule, alone and without counting other regulations, will be highly impactful on the financial system and the economy.

Large banks already adhere to roughly two dozen balance sheet thresholds (e.g., risk-based capital, liquidity coverage ratio, etc.), and yet it is rare to encounter a rule that is anticipated to be the "binding constraint"[6] for some banks. In many cases, risk-based capital requirements remain the binding constraint, but some banks have named the "supplementary leverage ratio" ("SLR"), as well. The authors of the proposed rule note that the estimated shortfall in meeting the NSFR stands at $39 billion. There is a belief that the NSFR as constructed could become the binding constraint for some banks, and is a rule with potentially very material consequences for the industry, the landscape of systemic risks and the economy.

Commercial Real Estate Contribution

The $6.7 trillion commercial real estate market is leveraged with $3.6 trillion of CRE debt outstanding – primarily provided by commercial banks and commercial mortgage backed securities (CMBS). It is important to note that approximately $1 billion a day of this debt is maturing though 2018 – including $411 billion in bank debt. Without adequate credit capacity, this wall of maturities could create problems in the banking system. A sudden and significant

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5 "The Net Stable Funding Ratio: Neither Necessary nor Harmless" https://www.theclearinghouse.org/~/media/tch/documents/20160705_tch_nsfr_note.pdf

6 A binding constraint is a required threshold that represents the most severe of all that apply.

contraction of bank credit available for commercial real estate could lead to a decline in property values and in the economic condition of existing borrowers.

Such a decline would, in turn, reduce the quality of outstanding loans and thus threaten the health of banks, which are significantly concentrated in commercial real estate, and likely lead such banks to further curtail credit. Unfortunately, we have experienced such vicious cycles in the past and seen the consequences for our economy as a whole. This experience underscores the importance of ensuring that the NSFR requirement is applied and administered with care; otherwise, the new rule can become a self-fulfilling prophecy, inducing the very same consequences it seeks to prevent.

Finally, it is important to note the significant contribution that the commercial and multifamily real estate industry makes to the nation's GDP. This generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Without adequate credit capacity for this important sector, jobs and tax revenue will be lost.

Goals versus Outcomes of the Regulatory Framework

The Associations assert that the regulatory framework governing all aspects of CRE finance and lending (including regulations required by the Dodd-Frank Act as well as those required by Basel) within large and small banks is already well-established and robust, and possibly overly extensive and complex. Taking only those rules that directly affect CRE finance products:

- The Agencies cited seven existing rules and pieces of prudential guidance that apply to whole CRE loans currently in their letter to the industry dated December 18, 2015;[7]

- In addition, there are six accounting, capital and liquidity rules that are not noted in the industry letter and that are catalogued in Appendix D but that also apply to CRE loans held on banks' balance sheets;[8] and

- As of this writing on the CMBS side, there are seven rules that have been finalized and that are in full conformance, five that have been finalized and have not been / or have been partially implemented, and four rules that have yet to reach finalization in the U.S.[9][10]

- Relating to the CMBS sector, seven of those rules are capital and liquidity related, not including the proposed NSFR rulemaking.

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7 For a comprehensive list of regulations that apply to all CRE financing positions, please refer to the Agencies' letter to the industry of December 18, 2015 and to Appendix C of this document. https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20151218a1.pdf

8 See Appendix D for a list of rules that the Associations believe are highly influential in CRE bank lending.

9 See Appendix E for a list of the regulations that apply to and that are proposed for CMBS.

10 See Appendix F for a list of rules that apply to CRE financing products arranged by rulemaking phase.

There are undeniable benefits of the structural changes that these policies have institutionalized within the banking and financial system. Some of the most often noted include controls mandated by Dodd-Frank, extraordinary leaps in management capabilities to monitor and mitigate risk, and the strong capital cushion banks now have to help weather the magnitude and length of any future downturn. Overall, the Associations support the Agencies in strengthening the financial system and agree that this is a challenging objective requiring that the regulators reconcile competing goals.

At the same time, stakeholders of all types are increasingly raising concerns about complexity and redundancies, and are forcing questions about the prudence of fulfilling the regulatory agenda as outlined seven years ago at the 2009 Group of Twenty (G20) summit without fully considering new and relevant information.

1. *The question of regulatory Complexity*

While the Associations accept that a sophisticated financial system calls for certain complexities of the regulatory framework, it is also true that those complexities have blurred the causal relationship between policies and outcomes. In turn, many of the rules have been written with the best of intentions, but that have been constructed in some ways that have led to less than optimal outcomes with unintended consequences. These unintended consequences, when analyzed holistically, are creating a regulatory framework that may be weakening certain former strengths of the financial system, as the following examples demonstrate:

a. The combination of requirements promulgated in the final High Volatility Commercial Real Estate (HVCRE) rule is encouraging <u>less, rather than greater, equity contributions in construction loans</u>. While regulators have been briefed on the issue, there have been no revisions to definitions in the rule. The HVCRE stands as an example of how the unintended consequences of a relatively simple rule can lead to well-recognized outcomes that counter the regulatory goals of the rule, yet remedies are difficult to achieve. Put simply, once a rule is finalized, it is difficult to revise even when all parties agree that it should be changed.

b. At the system-wide level, the entire industry has argued – both lenders and investors alike – for more than a year that regulation in its totality is negatively impacting market liquidity that are evidenced by reductions in issuance and capital availability, lack of price transparency, and downward pressure on valuations of assets held by both banks and funds (exposing taxpayers and savers to additional risk). Based on a survey and interviews taken within the CRE Finance Council membership community in 1Q 2016, the most impactful rules are capital (risk-based and the leverage ratios), liquidity, risk retention and the Volcker rule.[11]

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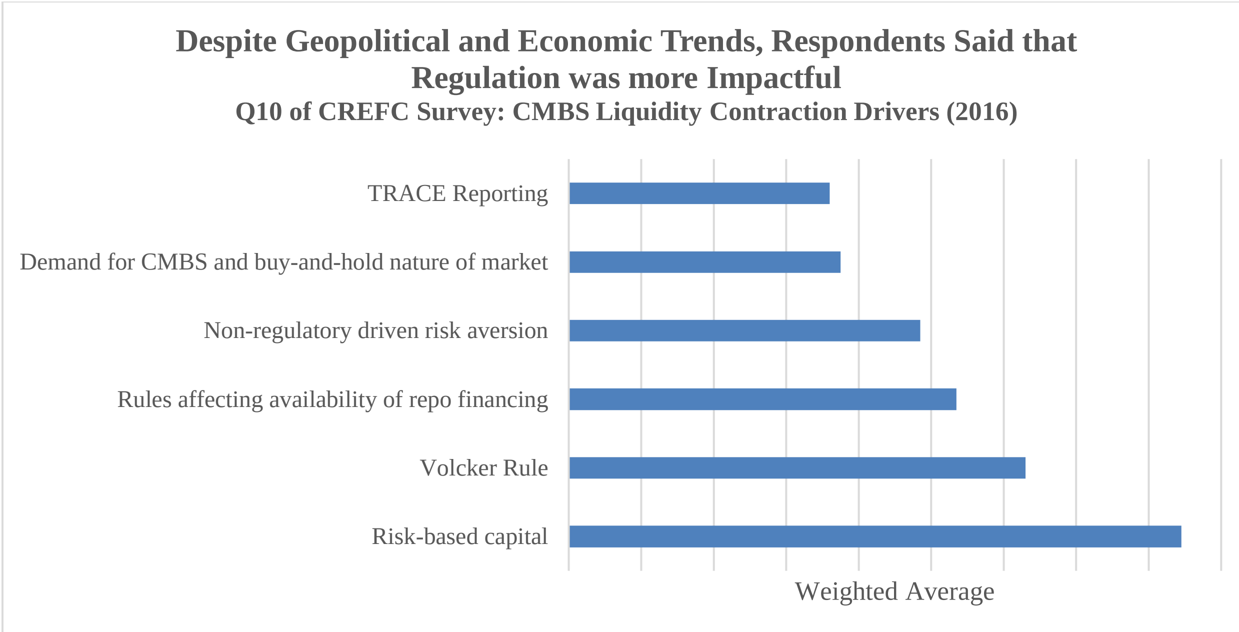
[11] There were 32 respondents to the CREFC survey.

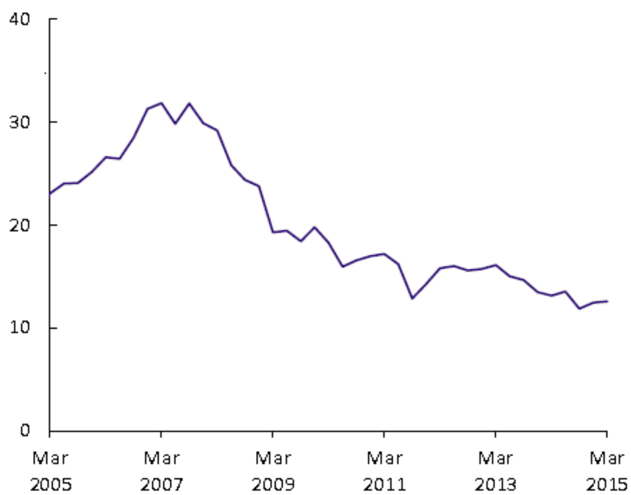


2. *The question of regulatory Redundancies*

a. At the rule level, the Associations agree with the wider industry view that the goals of the NSFR overlap with the goals of other rules, especially the SLR. We understand that the authors of the NSFR sought to reduce the level of short-term funding in the system, as one of their goals. According to Federal Reserve Governor Daniel Tarullo[12], this has already largely been achieved. In an interview with Jon Hilsenrath and Jacob Schlesinger of the Wall Street Journal on July 7, 2016, Governor Tarullo highlighted the system's "reduced dependence upon short-term funding" as one of the Agencies' most notable achievements since the crisis. The Associations' members have explained that the SLR, to which banks have already conformed, was highly influential in reducing the amount of repo financing, which is often the preferred form of financing for trading activities.

[12] See minute 23. http://www.wsj.com/articles/video-hourlong-q-a-with-fed-governor-daniel-tarullo-1467919491

Security Broker-Dealer Net Repo Liabilities as Percent of Total Liabilities[13]



Sources: Financial Accounts of the United States, Haver Analytics, OFR analysis

b. Across the system, regulatory redundancies imply that the regulators may well overshoot their intended targets, and the magnitude of regulatory impact will exceed expectations or the scope of the impact will be wider than anticipated. To this point, there is evidence that some of the regulation regarding the CRE sector introduced by the Agencies in 2006 forced banks to reallocate capital away from CRE lending and may have contributed in some measure to the increase in residential real estate lending.[14] As such, it stands as an example of how even relatively simple policies can lead to unforeseen shifts and can accelerate the emergence of new risks in the system.

Officials Even Questioning the Prudence of the Regulatory Agenda

At the time of the G20 summit, evidence and political will greatly favored policies developed with the primary goal of reducing the risk of another crisis. Starting in 2014, international policymakers began to discuss recalibrating regulation as their own analysis has shown that the updated regulatory structure for securitization is causing liquidity strains and therefore has cooled lending to small and medium sized enterprises. While crisis prevention remains an important priority, arguably global economic and employment trends, as well as increasing political instability, are driving the rising importance of growth, capital availability and market liquidity upwards on the list of objectives. While international regulators have begun

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13 Baklanova, V,, A. Copeland and R. McCoughrin, "Reference Guide to U.S. Repo and Securities Lending Markets", Federal Reserve Bank of New York Staff Reports, September 2015. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr740.pdf

14 Bassett, William F. and W. Blake Marsh, "Assessing Targeted Macroprudential Financial Regulation: The Case of the 2006 Commercial Real Estate Guidance for Banks", 2014. http://www.federalreserve.gov/pubs/feds/2014/201449/201449pap.pdf

the process of reviewing and recalibrating the updated regulatory structure, no such efforts have been publicly discussed by U.S. regulators.

As evidence of the momentum behind the reprioritization of goals, there have been a number of instances in which regulatory and political officials themselves have questioned the validity of restrictive and often redundant rulemaking. The Associations' views are offered within the context of the below events, as they point to junctures at which the regulators in other jurisdictions or at the international level have analyzed and reconsidered the magnitude and complexity of the new regulatory structure:

- In May 2014, the Bank of England (BOE) and the European Central Bank (ECB) released the results of their study, "The case for a better functioning securitization market in the European Union," and called for a recalibration of capital and liquidity charges in the face of enhanced Dodd-Frank like controls implemented post crisis.[15]

- In September 2015, European Commission, proposed legislation to implement lower capital and liquidity charges for certain securitizations that met Dodd-Frank like requirements.

- In early July 2016, Governor of the BOE Mark Carney publicly questioned the SLR rule and its potential impact on has the costs of central clearing.

- The BOE cut the countercyclical capital buffer requirement from 0.5 percent to 0.0 percent on July 5, 2016 in response to market volatility and rising concerns about capital availability in the wake of the Brexit vote.

- The Basel Committee on Banking Supervision ("BCBS") incorporated capital and liquidity relief for certain securitizations under the risk based capital framework on July 11, 2016.[16]

- The European Commission had been continually evaluating the impact of regulatory policies on a rule-by-rule basis, but has more recently called for evidence of the economic impact of regulation more broadly. [17][18]

Questions about NSFR Rule Construction, Costs and Benefits

The Associations agree with the Industry Letter in that the RSF weightings appear to be severe and are reflective more of crisis rather than business-as-usual ("BAU") conditions. While true for many asset classes, this appears to be particularly true for traded credit products, such as CMBS. Especially because the primary goal of reducing the proportion of short-term funding has already been accomplished, the Associations question the net benefits in light of the potential

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[15] https://www.ecb.europa.eu/pub/pdf/other/ecb-boe_case_better_functioning_securitisation_marketen.pdf
[16] http://www.bis.org/bcbs/publ/d374.htm
[17] http://ec.europa.eu/info/strategy/better-regulation-why-and-how_en
[18] http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf

costs of the rule. The Associations appreciate the opportunity to raise the following issues regarding the treatment of CRE financing products below:

1. *Question of HQLA treatment*

Structuring the NSFR around HQLAs treatment essentially doubles the impact of liquidity rules for CRE products. The Associations recognize that aligning the definitions within the two liquidity ratios outlined under Basel III is sensible. Because the CRE product set was treated as punitively as possible in the HQLA framework when designed for the LCR, the incorporation of these hierarchies into the NSFR further institutionalizes a weighting system that materially disadvantages CRE loans, and especially CMBS, relative to other asset classes. Indeed, many of the Associations made recommendations to the Agencies through various work streams at the national and international levels to try to remedy regulatory burden within the LCR and alternatively, through the Simple, Transparent, Comparable ("STC") work stream coordinated by the BCBS and the International Organisation of Securities Commissions.[19]

In the Associations' and their members' views, HQLA is significant, as it naturally favors sovereign-issue and sovereign-supported markets, and disadvantages private-label markets. In the case of CMBS, some of the Associations argued that senior investment-grade bonds should be allowed better treatment under the HQLA due to both demand and transparency factors that the prudential regulators deemed to be significant for liquidity.

The Associations recognize that it in some ways the HQLA system was designed to force more realistic liquidity pricing in an era of secularly low benchmark rates and "cheap money". At the same time, the hierarchies of liquid assets as defined within the HQLA definitions has in fact resulted in self-fulfilling prophecies and have amplified liquidity where it already existed, and detracted from liquidity where it was fundamentally less available. In other words, the introduction of the LCR led to a stratification of markets; broadly speaking, in sovereign markets and sovereign-guaranteed markets, the LCR contributed to declining liquidity premiums and to more volatile pricing and increasing liquidity premiums in other markets.

As an example, standard deviations on non-investment grade CMBS bond spreads remained roughly double those of similarly-rated corporate bonds in 2Q 2016, well after worries about growth and geopolitical issues caused volatility to spike throughout markets in the U.S. and elsewhere. This indicates that the CMBS market, which was fundamentally sound in terms of credit quality trends at the time, was made less resilient by external factors and could not repair itself post-market shock as efficiently as other markets. This supports the industry view that regulation has significantly altered the health and viability of the CMBS market already and that further regulatory burden may severely compromise a formerly stable market.

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[19] See Appendix G for a list of letters submitted by the Associations regarding treatment of residential products in liquidity and STC regimes.

2. *Question of calibration of RSF framework*

   The Associations are in alignment with the industry working group in that we also believe that the RSF weightings outlined in the proposed rule are severe and are more reflective of a stress scenario, such as in the case of the LCR. In addition to the fact that the weightings seem to be calibrated more toward stress than BAU conditions, it is also concerning that the central thesis of the NSFR competes with the Generally Accepted Accounting Principles ("GAAP") accounting framework.

   Taking the example of a CMBS bond that is being held for the purposes of secondary market making and is booked in the trading portfolio, the NSFR requires that this short-term asset be 85 percent backed by stable funding, which is by definition, funding that is expected to be in place for a year or more.

   Prior to the crisis, banks tended to match their funding profiles more in line with the intended hold period and the accounting treatment, rather than the duration or maturity of the asset. Said differently, CMBS bonds held for short-term purposes would have been funded mostly by short-term financing, typically repos. It can be argued that the historical liquidity management approach was reductive in some ways and led to an environment in which disproportionate amounts of short-term leverage could build in the financial system.

   Yet, it is not rational to fully disrupt the norm, as the Agencies themselves also historically follow accounting treatment in other important regulatory frameworks. The risk-based capital ("RBC") framework has always and to this day continues to work within the bounds of accounting treatment. This is an important feature of the two regimes—RBC and GAAP – and a critical one that allows them to complement each other instead of competing.

   In the best case scenario, the dichotomy between the NSFR and the accounting view will only present a challenge to bank executives in their strategic and balance sheet management roles. In a worst case scenario, the dichotomy between the two approaches could in fact give rise to unanticipated risks in the system. The most likely of these is that the disruption to trading businesses is so extreme, because of the NSFR alone or together with all regulation, that secondary trading is further dislocated and savings held in securities and traded loan form is exposed to amplified volatility and risk of devaluation.

Recommendations

In order to avoid further and unnecessary disruption to the markets, the Associations recommend that the Agencies do two things:

1. *Review the HQLA framework and expand to include other asset classes*

   The Agencies revisit the HQLA framework and consider incorporating additional factors in order to avoid unduly penalizing non-sovereign markets, such as CMBS. Specifically, the Agencies should consider performance by seniority of bond, transparency and investor base, risks posed to the system, and other regulatory restrictions already in place.

2. *Reconsider RSF calibrations in light of in-place regulations and market practices*

Similarly, the Associations recommend that the Agencies develop a benchmarking process that overlays their RSF weightings methodology. The benchmark factors should incorporate regulatory constraints, but ideally could also include benefits for certain market practices that conform to safety and soundness goals, such as hedging with appropriate instruments and clearing, where applicable. In this way, the Agencies can maintain their original RSF approach, but also avoid redundancies that could cause unnecessary market distortions.

The Associations offer a draft list of criteria below, and recommend that the Agencies develop the list further so that the criteria are relevant for all asset classes.

Proposed RSF Benchmarking Criteria
- -
Current Regulatory Framework
Does the SLR affect the funding practice and costs of the business
Do Volcker trading restrictions or prohibitions apply to the asset class
Has the Covered Institution implemented B2.5 risk-based capital treatment
Meets external ratings criteria of most institutional investors
If held in satisfaction of Risk Retention
Regulation AB II (pool level)
Regulation AB II (loan level)
Trade level reporting requirements under FINRA /SEC rules
Other Market and Operational Factors
Senior bond*
Is the bond / portfolio hedged with an instrument(s) that meets regulatory netting guidelines
Cleared instrument
Size of market does not pose systemic risk
* As per BCBS 374, Revisions to the Securitisation Framework. https://www.bis.org/bcbs/publ/d374.htm

The Associations recognize that the enclosed proposed benchmarking recommendation is presented without full industry review, though the high level principle underlying the recommendation – that the NSFR is a redundant piece of regulation – is in alignment with the Industry Letter. Additionally, the Associations would like the Agencies to know that the CRE Finance Council has collected views from its membership, including the investor community, and has found in numerous forums over the past six months that these members have no objections to advocacy positions targeting the relaxation of new and additional capital and liquidity rules. In fact, many of CREFC's investor members have contacted the association and requested that the group try to rationalize further capital and liquidity rulemaking due to the liquidity impacts of current regulations that are already observable in the marketplace.[20]

3. Release "critical foundations" and delay implementation to allow industry to analyze impact meaningfully as per Administrative Procedure Act

The Associations are aligned with the Industry Letter authors in their concerns that the Agencies neglected to release "critical foundations" of the NSFR, without which the institutions cannot reasonably benchmark outcomes. Again, it appears that the Agencies calibrated the RSF and ASF factors to stress, instead of BAU conditions, and as such, the requirements will lead to more extreme outcomes than targeted.

In light of this, and because of the fact that there are so many complex rules going into effect in the near future, it is important to delay the implementation date, which is currently set for January 1, 2018. Moreover, as noted above in this letter, there are several other rules that encourage the reduction in short-term financing already in place. As such, the Agencies should agree that the risk of leaving a gap in their micro- and macroprudential regulatory frameworks is not present in this case.

Conclusion

As noted above, there are several rules already in place already, of which the SLR is most important, but RBC and the Volcker rule should also be noted, that ensure the level of short-term funding remains proportionately lower in the system. Given that the principle benefit of the rule has already been achieved through regulation that is now a permanent feature in the system, it is important that the Agencies reconsider the punitive nature of the HQLA treatment and the RSF weightings before progressing with final rulemaking.

We would also like to reiterate to the Agencies in closing that our membership is diverse and that we have reached a majority on these views amongst not only members that are Covered Institutions, but across all types of market participants, including conservative investors. The Associations would be glad to answer questions and to facilitate further discussions regarding the views enclosed herein. Please contact Christina Zausner at czausner@crefc.org or Chip Rodgers at crodgers@rer.org.

Sincerely,

Commercial Real Estate Finance Council
Institute of Real Estate Management
National Apartment Association
National Association of Real Estate Investment Trusts
National Association of Realtors
National Multifamily Housing Council
Real Estate Roundtable

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20 CREFC last reviewed these positions with the Investors forums on July 12, 2016, a Policy Committee call held on July 28, 2016, and staff has had numerous bilateral conversations with a range of investor types, from conservative to opportunistic, and from the largest to small, private funds.

Appendix A

The CRE Finance Council (CREFC) is the collective voice of the more than $3.5 trillion commercial real estate finance market, and our members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities lenders and issuers; loan and bond investors such as insurance companies, pension funds and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers. CREFC's membership consists of more than 300 companies and 8,000 individuals. Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy. In addition to its sector specific member forums, committees and working groups, CREFC acts as a legislative and regulatory advocate for the industry, plays a vital role in setting market standards and provides education for market participants in this key sector of the global economy. For more information visit www.crefc.org

The Institute of Real Estate Management (IREM) is an international community of real estate managers dedicated to ethical business practices, maximizing the value of investment real estate, and promoting superior management through education and information sharing.

An affiliate of the National Association of REALTORS, IREM is the home for all industry professionals connected to real estate management – and the only organization serving both the multi-family and commercial sectors.

The National Association of REALTORS® is America's largest trade association, representing over 1.1 million members, including NAR's institutes, societies, and councils, involved in all aspects of the residential and commercial real estate industries.

Our membership is composed of residential and commercial REALTORS® who are brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of approximately 1,200 local associations/boards and 54 state and territory associations of REALTORS®.

The term REALTOR® is a registered collective membership mark that identifies a real estate professional who is a member of the National Association of REALTORS® and subscribes to its strict Code of Ethics.

Working for America's property owners, the National Association of REALTORS® provides a facility for professional development, research, and exchange of information among its members and to the public and government for the purpose of preserving the free enterprise system and the right to own real property.

NAREIT®, the National Association of Real Estate Investment Trusts®, is the worldwide representative voice for REITs and publicly traded real estate companies with an interest in U.S. real estate and capital markets.

We represent a large and diverse industry including equity REITs, which own commercial properties, mortgage REITs, which invest in mortgage securities, REITs traded on major stock exchanges, public non-listed REITs and private REITs. U.S. Equity REITs collectively own nearly $2 trillion of real estate assets and, by making investment in commercial real estate available in the form of stock, our REIT members enable all investors – importantly, small investors – to achieve what, once, only large institutions and the wealthy could.

REIT-based real estate investment historically has delivered long-term performance and strong dividends for investors. Over the 20 years ended December 31, 2014, stock exchange-listed U.S. REITs delivered their shareholders a compound annual total return of 11.1 percent, higher than the S&P 500’s 9.8 percent. In 2014, listed U.S. REITs paid out $41 billion in dividends.

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 69,000 members representing more than 8.1 million apartment homes throughout the United States and Canada.

The Real Estate Roundtable and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the U.S.'s leading income-producing real property owners, managers and investors; the elected heads of America's leading real estate trade organizations; as well as the key executives of the major financial services companies involved in financing, securitizing, or investing in income-producing properties.

Appendix B

CREFC Rules 1-Page Primer	
Rule Title	Net Stable Funding Ratio (NSFR)
Purpose of Rule	Reduce likelihood of disruptions to banks' sources of funding (thereby compromising their liquidity position) by requiring them to maintain a minimum level of stable funding relative to the liquidity of their assets, derivatives and commitments over a 1-year period; addresses the mismatch between long-term loans made by banks and the relatively short-term funding used by banks; complements the liquidity coverage ratio by assessing banks' liquidity condition over a longer time period than the LCR (which focuses on short-term liquidity over a 30-day period)
Source	FDIC, Federal Reserve, OCC + Basel Framework (finalized as a Basel standard in 2014)
Phase	U.S. proposed rule published May 3, 2016; comment deadline: Aug. 5
Entities / Markets / Products Covere	Large banks only; CRE loans + CMBS products
Future Milestones	Final U.S. rule in late 2016 or 2017; effective date: Jan. 1, 2018 (coincides with Basel deadline)
Core Requirements	Ratio = Available stable funding (ASF)/Required Stable Funding (RSF); ratio must be equal to or greater than 1 at all times; ASF = regulatory capital + liabilities, weighted by factor of funding reliability/how likely the liability is to run (0% for likely; 100% for unlikely to run); RSF = essentially all asset positions, weighted by estimated % that would not be monetized during a liquidity event lasting 1 year (i.e., how liquid/illiquid the asset is); Tier 1 regulatory capital (cash, U.S. Treasuries, etc.) are included under ASF and RSF, but are effectively excluded from the denominator with a risk weighting of 0%; focus = the denominator (and treatment of assets thereunder), which drives the amount of stable funding required (i.e., the higher the denominator, the more stable funding)
Market Impact (expected or observe	Generally expected to further restrict availability of capital (in conjunction with other capital requirements); general shift away from assets that require more stable funding (e.g., CMBS); also may favor issuance of corporate debt/bonds over using a SBSC vehicle due to disparate denominator weighting (e.g., CMBS at 85-100%, depending on maturity length; corporate bonds at 50% as level 2B HQLA assets); may actually amplify illiquidity episodes by incentivizing banks to hold cash (0% RSF weight/no stable funding required) rather than make short-term loans to other financial institutions (does require stable funding); may result in less credit for households and non-financial businesses because of relatively high RSF weights/high stable funding required
Outstanding Questions	Are CRE loans/CMBS disadvantaged under the rule vis-à-vis other products? Should we seek different/better treatment under the rule (i.e., lower denominator factor) for QCRE and/or single-asset, single-borrower loans (e.g., qualify as HQLA/"liquid and readily-marketable")? How can/should we reconcile our general message on liquidity issues with an argument that our products should be treated as liquid in this context?

Appendix C
Joint Agencies' Letter (December 18, 2016), Rules Reference

Cross References to:

- SR Letter 13-17, "Interagency Supervisory Guidance Addressing Certain Issues Related to Troubled Debt Restructurings"
- SR Letter 12-7, "Supervisory Guidance on Stress Testing for Banking Organizations with More Than $10 Billion in Total Consolidated Assets"
- SR Letter 10-16, "Interagency Appraisal and Evaluation Guidelines"
- SR Letter 09-7, "Prudent Commercial Real Estate Loan Workouts"
- SR Letter 07-1, "Interagency Guidance on Concentrations in Commercial Real Estate"
- SR Letter 06-17, "Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL)"
- SR Letter 05-14, "Interagency FAQs on Residential Tract Development Lending"
- SR Letter 01-17, "Final Interagency Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Banks and Savings Institutions"

Appendix D
Proposed and Final Rules that Impact CMBS

	Rule	Agencies	Phase	Institutions / products impacted	Impact	Impact assessment	Future milestones	Divergence with EU
To be implemented (partially or at all) and highly impactful	Revisions to the Treatment of Securitizations in the Banking Book	Fed, FDIC, OCC	Final at Basel level	CMBS held by banks in the Banking (investment) portfolio	Roughly 2 times current capital holdings (as per TCH analysis covering all asset classes)	Markets not aware (though it is a big driver of the FRTB)	Proposed US rule expected in 2017	N/A
	Revisions to Market Risk Requirements (aka FRTB)	Fed, FDIC, OCC	Final at Basel level	CMBS held by banks for market making (trading portfolio)	Roughly 2+ times of capital for many positions, but could require more than MV of certain bonds	Was rated primary reg impact in the future in survey; Seems to have been a driver in recent volatility	Proposed US rule expected in 2017	N/A
	Risk Retention	Fed, FDIC, OCC, SEC, FHFA, HUD	Final at US level	All CMBS issued after 12/24/16	Issuers must hold 5% of credit value for 5 years or more	Was rated most important driver of 1Q volatility in survey	Effective date on 12/24/16	Debate in EU parliament as to whether to provide regulatory relief to ABS or to require 20% retenion; current EU rule requires that investors eforce compliance
	Basel III Leverage Rule	Fed, FDIC, OCC	In partial effect	Large banks	Applies capital requirements to repos (funding source for broker dealers)	Yes, one of the reasons for reduction in inventories	Being reconsidered at Basel level, but not clear whether changes wil necessitate revisions in US	US went beyond FSB / BCBS requirements but Basel contemplating additional requirements
	Net Stable Funding Ratio	Fed, FDIC, OCC	Proposed at US level	Large banks	Following the logic of LCR; requires that assets be backed by longer term debt (must be able to self-fund for 1 yr) based on slotting of assets in LCR	No	Comment period ends on 06/24/16	N/A
Fully implemented and highly impactful	FAS 166 / 167	FASB	In effect	All GAAP repoters	Placed limitations on off-balance sheet treatment of ABS	Yes, it has been very influential in preventing the return of re-leveraging through CDOs	N/A	N/A
	Basel 2.5 Market Risk Rules	Fed, FDIC, OCC	In effect	Large banks	Applies different capital requirements since the crisis (at a high level, was meant to close the arbitrage between structured products and whole loans)	Yes, one of the reasons for reduction in inventories	N/A	N/A

Appendix D (Continued)
Proposed and Final Rules that Impact CMBS

	Rule	Agencies	Phase	Institutions / products impacted	Impact	Impact assessment	Future milestones	Divergence with EU
Fully implemented and highly impactful	Volcker	Fed, FDIC, OCC, SEC, CFTC	In effect	Market making for CMBS	Requires market makers to observe compliance and reporting obligations regarding prohibitions in proprietary trading	Yes, one of the reasons for reduction in inventories	N/A	EU still in the concept phase
	Liquidity Coverage Ratio	Fed, FDIC, OCC	In effect	Large banks	Requires originators of revolving products (construction and REIT/fund lending) and issuers of CMBS to hold liquid assets against potential outflows in a 30-day period	Yes, one of the reasons for relatively better trading demand for securities that are treated better under the LCR	N/A	More inclusive HQLA categories, lower requirements and longer imlementation timeline
	Rating agency rules / supervision	SEC	Everything but Franken amendment implemented	All CMBS	Rating agency methodologies validated by regulators and supervised ongoing	Yes, subordination roughly double peak (2006 / 2007) levels and no CDOs issued in recent years	Congress could promulgate law against Franken amendment	N/A
	Reg AB II	SEC	In conformance (Pool level disclosures)	All CMBS	Essentially mandating the Annex A and the IRP, also adds a CEO certification requirement	Yes, part of the disruption in the market in 1Q 2016	Conformance for loan level requirements	N/A
Not expected to be especially impactful	SEC/Finra trade reporting	SEC, Finra	Finra rule proposed	All CMBS	Dealers must report certain trade level info (including deal size, dealer, bid-ask spread) in TRACE	Yes, one of the reasons for reduction in inventories and turnover	Awaiting SEC rule and further requirements re: dissemination of trade reporting	N/A
	BCBS Step-in Risk	Fed, FDIC, OCC	In consultation at BCBS level	Not clear whether it would apply to some CMBS	Banks will have to monitor and measure, if not also allocate capital against, certain securitizations	No	Awaiting another BCBS consultation, or perhaps the BCBS will abandon the	N/A
	Simple, Transparent and Comparable	Fed, FDIC, OCC	In consultation at Basel level	All CMBS	US regulators not planning on adopting in the US	No	US regulators not planning on adopting in the US	An EU concept
Related to CMBX	Margin Rules	Fed, FDIC, OCC, SEC, CFTC	Fed, FDIC and OCC have finalized, CFTC has almost finalized and SEC will conform	Applies to all bank and nonbank interdealer trades for noncleared derivatives - CMBX	Requires that all CMBX trades be subject to initial margin until industry moves to clearing; industry trying to figure out whether initial margin requirements are more onerous than the costs under clearing	No	Waiting for SEC rule; others go into effect on 09/01/16; EU pushed back conformance date to sometime in 2017	EU planning implementation for 2017

Appendix E
Timeline of Rules Impacting CMBS

CMBS							
Implemented Rules	**Reg AB II** *Pool and loan level reporting **CEO certification most challenging aspect	**B2.5 / Market Risk** *Post-crisis risk-based capital requirements for all trading book exposures (market making) **Was meant to even up the RW requirements between portfolio lending and CMBS	**LCR** *stress test that contemplates a 30-day crisis and funding ongoing operations from asset sales **Est 30 - 65 bps impact per loan	**Volcker** *Prohibition of proprietary trading that reinforces agented trades over inventories **Extreme regulatory / reputational risk attached	**Some TRACE reporting** *dealers must report certain trade level data (transparency of spreads) **Thought to be a negative for CMBS secondary liquidity bc makes only revenue source for dealers (fess) known	**Rating agency rules and oversight** *Transparency and discipline around ratings methodologies **Very influential in reducing availbility of CMBS funding	**FAS 166 / 167** *Established higher threshold for OBS treatment **Very inluential in reducing availbility of CMBS funding
Final Rules, not fully Implemented	**Risk Retention** *Requires that originators, issuers or B-piece buyers retain 5% of CMBS bonds (eat-your-own-cooking) **Est 20 - 50 bps impact and caused some volatility in 1Q16	**FRTB** *Meant to increase RBC burden relatively higher than portfolio loans **Est to req turnover rates of 200+ times per bond to break even and CMBS treated worst	**Revisions to treatment in banking book** *Replaces IRB with SA approach for CMBS (analogous to SSFA concept) **Roughly 2x RBC requirements for ABS / CMBS vs portfolio loans	**Leverage rule** *Intended to serve as a check on RBC framework and often cited as best alternative to RBC due to simplicity **Applies reg capital requirements to repos and other short-term funding arrangements (very challenging for trading businesses)	**Margin rules** *applies outsized initial margin requirements to OTC derivatives (CMBX) **makes CMBX less profitable and motivating industry to move it onto exchange (clearing)		
Future Rules	**NSFR** *1-yr stress test in which bank can't issue new debt and so requires that assets be backed by some % of 1+ yr funding **thought to be relatively challenging for CRE positions	**Additional TRACE reporting** *seems it would apply to buyside **Buy and sell side against additional reporting and overall burden on dealers	**Step-in risk** * contemplates a reputaitonal event that would induce issuer / originator / servicer to defend related CMBS **could be very impactful but regulators seem to be backing off	**STC** *Intended as a framework through which to reverse some of the reg burden on ABS **Does not grant any improved treatment for CMBS			
	Dodd-Frank rule	Basel III	Other rule	* = core requirements	** = impact on CRE funding		

Appendix F
List of Additional Rules Applying to Whole Loan Business

Rule	Agencies	Phase	Institutions / products impacted	Impact	Observable in markets or not	Future milestones
BCBS - Reducing variation in credit-risk weighted assets	Fed, FDIC, OCC	First consultation open	Internal ratings based (IRB) banks	Setting floors under some portfolios and requiring Standardised approach (SA) for others	No	Comment period closes on 06/24/16
FASB Updates to assessment of ALLL / BCBS Guidance on Expected credit loss (ECL)	Fed, FDIC, OCC	Final and in beginning stage of implementation	All banks	Requires banks to assess ALLL based on through-the-cycle methodologies, instead of historical approach (has to be some evidence of stress to classify a credit)	Possibly, may be one of the drivers in tightening of u/w standards	N/A
Net stable funding ratio	Fed, FDIC, OCC	Proposed at US level	Large banks	Following the logic of LCR; requires that assets be backed by longer term debt (must be able to self-fund for 1 yr) based on slotting of assets in LCR	No	Comment period ends on 06/24/16
BCBS - Revisions to standardised approach for credit risk	Fed, FDIC, OCC	Final BCBS guidelines published on 12/04/16	Applies to all banks but likely to be most impactful for mid-sized banks	Establishes SA methodologies for IPRE, owner-occupied and ADC lending	No	US rulemaking expected in 2017
LCR	Fed, FDIC, OCC	In effect	Large banks	Contemplates a 30-day stress event during which the bank must fund obligations out of asset sales; applies to ADC and other revolving loans (e.g., REIT loans)	Yes, may add 30 - 65 bps to cost of loan; generally thought to disadvantage CRE severely	N/A
HVCRE	Fed, FDIC, OCC	In effect	All banks	Raises RBC RW from 100% to 150% under certain circumstances and limits ability to take cash out of project even after completing milestones	Data starting to prove case that HVCRE causing banks to act differently than would have otherwise	Basel 4 revisions may lead to greater application of rule

Appendix G
Relevant Responses to Agencies and BCBS by Associations

Liquidity

January 31, 2014

Re: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring
(OCC Docket ID 2013 - 0016; FRS Docket No. R-1466; FDIC RIN 3064-AE04)

http://www.federalreserve.gov/SECRS/2014/February/20140226/R-1466/R-1466_013114_111953_335276043251_1.pdf

March 13, 2014

Re: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring
(OCC Docket ID 2013 – 0016; FRS Docket No. R-1466; FDIC RIN 3064-AE04)

https://www.fdic.gov/regulations/laws/federal/2013/2013-liquidity_coverage_ae04-c_78.pdf

May 19, 2016

Senate Banking Committee, Subcommittee on Securities, Insurance, and Investment
Hearing entitled "Improving Communities and Business Access to Capital and Economic Development"

http://www.banking.senate.gov/public/_cache/files/40b4851d-b063-4d3d-898b-c5fde727078e/B4E0BBC3903C61333A6ADC3ECAEDDB39.051916-fung-testimony-sii.pdf

Capital

August 12, 2014

Reference: Consultative Document – Revisions to Treatment of Securitisation

http://docs.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/CMSA_Issues/FinalCover_PerraudinStudy.pdf

March 27, 2015

Reference: Consultative Document – Capital Floors

http://docs.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/Joint_Assocs_CapitalFloors_march252015(1).pdf

Appendix G
Sample of Relevant Responses to Regulators by Associations

Liquidity

January 31, 2014
Re: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring
(OCC Docket ID 2013 - 0016; FRS Docket No. R-1466; FDIC RIN 3064-AE04)
http://www.federalreserve.gov/SECRS/2014/February/20140226/R-1466/R-1466_013114_111953_335276043251_1.pdf

March 13, 2014
Re: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring
(OCC Docket ID 2013 – 0016; FRS Docket No. R-1466; FDIC RIN 3064-AE04)
https://www.fdic.gov/regulations/laws/federal/2013/2013-liquidity_coverage_ae04-c_78.pdf

May 19, 2016
Senate Banking Committee, Subcommittee on Securities, Insurance, and Investment
Hearing entitled "Improving Communities and Business Access to Capital and Economic Development"
http://www.banking.senate.gov/public/_cache/files/40b4851d-b063-4d3d-898b-c5fde727078e/B4E0BBC3903C61333A6ADC3ECAEDDB39.051916-fung-testimony-sii.pdf

Capital

July 25, 32014
Re: Survey on securitisation markets conducted by BCBS-IOSCO Task Force
http://docs.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/CMSA_Issues/CREFCCvrLtr_BCBS-IOSCOSecuritisationQuestionnaire_July2014.pdf

August 12, 2014
Re: Consultative Document – Revisions to Treatment of Securitisation
http://docs.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/CMSA_Issues/FinalCover_PerraudinStudy.pdf

March 27, 2015
Re: Consultative Document – Capital Floors
http://docs.crefc.org/uploadedFiles/CMSA_Site_Home/Government_Relations/Joint_Assocs_CapitalFloors_march252015(1).pdf