CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Mr. Robert de V. Frierson
Secretary
Board of Governors of the
Federal Reserve
20th Street and 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: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards and Monitoring; Proposed Rule; Docket OCC 2013-0016, RIN 1557 AD 74, 12 CFR Part 50; Regulation WW, Docket No. R-1466, RIN 7100 AE-03, 12 CFR Part 249; RIN 3064-AE04, 12 CFR Part 329

Dear Messrs. deV. Frierson, Feldman, and To Whom It May Concern:

The U.S. Chamber of Commerce ("the Chamber") is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. The Chamber formed the Center for Capital Markets Competitiveness ("the CCMC") to promote a modern and effective regulatory structure for the capital markets to fully function in a 21st century economy. The CCMC has commented[1] extensively on these issues in the past. We believe that appropriate leverage and capital requirements are necessary to avoid over-leveraging; however, leverage and capital standards that are too onerous 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.

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[1] *See* also letter of June 14, 2011 from the Chamber to Federal Reserve Chairman Ben Bernanke on G-SIFI surcharges, letter of October 22, 2012 from the Chamber to the regulators commenting on the proposed Basel III regulations, letter of September 19, 2013 from the Chamber to the Bank of International Settlements commenting on *Revised Basel III leverage ratio framework and disclosure requirements,* and letter of September 23, 2013 from the Chamber to the regulators on *Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions.*

The CCMC has serious concerns with the liquidity coverage ratio proposal. First, the CCMC is concerned that the liquidity coverage ratio proposal is premature because the Bank for International Settlements ("BIS") is currently reviewing ways to reduce the complexity and opaqueness of the Basel III capital agreements (Basel III").[2] The CCMC is also concerned that the liquidity coverage ratio proposal will preclude many fundamental and accepted business practices, thereby constraining the resources that businesses need to grow and create jobs. The impact of these constraints must be evaluated cumulatively with similar constraints arising from the leverage coverage ratio proposal. It does not appear, however, that the regulators are factoring in all of these impacts. For these and other reasons discussed below, the CCMC believes that the regulators are also using a faulty and incomplete economic analysis to assess the impacts of the liquidity coverage ratio proposal despite their acknowledgement that it is an economically significant rulemaking.

Accordingly, the CCMC requests that the regulators hold a joint roundtable to better inform their understanding of the broad impacts of the liquidity coverage ratio proposal on not only the financial institutions being regulated directly, but also the many businesses that rely on them. Obtaining such input will help the regulators make adjustments to strike the right balance between liquidity ratios, capital requirements, and efficient capital formation.

Our concerns are addressed in greater detail below:

I. Discussion

The CCMC appreciates the opportunity to comment on ***Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards and monitoring*** ("liquidity coverage ratio proposal") proposed by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Federal Reserve"), and the Federal Deposit Insurance Corporation ("FDIC") (also collectively referred to as "the regulators"). On October 24, 2013, the regulators issued the proposed liquidity coverage ratio rules. The proposed liquidity coverage ratio rules were published in the *Federal*

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[2] *See* discussion paper on *The Regulatory Framework: Balancing Risk Sensitivity, Simplicity and Comparability* ("Basel III capital simplification paper"). The Chamber submitted a comment letter on the Basel III simplification paper on October 11, 2013.

Register on November 29, 2013 and the comment period is scheduled to close on January 31, 2014. Let us state at the outset that the CCMC supports strong capital requirements and liquidity ratios to insure the stability of financial institutions. Appropriate and balanced capital and liquidity requirements are necessary to avoid over-leveraging and allow suitable levels of risk-taking needed to fuel economic growth and job creation.

a. Basel III Complexity and Simplification

Recently, regulators from across the globe have joined investors and other commentators in raising concerns that the Basel III capital framework is too complex. Part of the concern is that the complexity may cause opaqueness, frustrating the goal of safety and soundness by hampering the ability of regulators and investors to understand the health of individual banks or to compare the soundness of different banks. As a result, the Basel Committee on Banking Supervision ("BCBS") released the Basel III capital simplification paper to achieve a better understanding of the complexity of capital requirements and determine how to simplify them to better achieve stability and transparency at financial institutions. Comments to the Basel III capital simplification paper are currently being reviewed by the BCBS.

The CCMC commented[3] on the Basel III capital simplification paper and also wrote to the regulators, as well as to the BCBS, requesting that the Basel III leverage ratio framework and the enhanced supplementary leverage ratio standards be placed on hold pending the completion of the Basel III capital simplification paper.

The CCMC made this request because Basel III is the foundation for the system of capital requirements, leverage ratios, and liquidity requirements that global regulators have been building upon since the 2008 financial crisis. The regulators have moved forward in building such a system here in the United States, and in fact, have aggressively shaped tougher requirements than the majority of other nations. While tough capital rules may be necessary, there must also be a balance to ensure that American businesses are not placed at a global disadvantage. If the drafters of Basel III are now trying to

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[3] *See* letter of October 11, 2013 from the Chamber to BIS commenting on the Basel III capital simplification paper and Chamber letter of September 19, 2013 to BIS and September 23, 2013 on leverage ratios.

simplify it to reduce complexity, then the initiatives to implement Basel III, including in the U.S., should reflect that.

Accordingly, we would respectfully request that the regulators work with BIS on the Basel III simplification study and incorporate its recommendations where appropriate. This will help to simplify the composition of assets needed to satisfy the liquidity coverage ratio and provide greater clarity and understanding for market participants.

b. Inconsistent Regulation Across Jurisdictions

While Basel III attempts to create a uniform international system of capital and liquidity requirements and leverage coverage ratios, we note with significant concern the increasing number of differences arising in regulatory reforms across major jurisdictions. For example, the liquidity coverage ratio proposal by the regulators would increase the existing minimum leverage ratio requirement for certain large U.S. bank holding companies and their insured depository institutions, resulting in significant differences in the minimum capital requirements across product types. Such inconsistencies may introduce competitive disparities, operational and enforcement uncertainties and systemic inefficiencies, all of which could lead to greater systemic risks, adversely impact economic growth and impede cross-border capital flows needed for businesses to operate on a global basis.

The CCMC recognized the need for and called for comprehensive regulatory reform before the 2007-2008 financial crisis. Basel III can only be a homogenous standard if its interpretation, application and enforcement are the same across the board. An integrated regulatory framework, implemented consistently across jurisdictions, is necessary to provide uniform incentives and disincentives to mitigate potential systemic risks to the safety and soundness of the financial system. As a part of an international system of capital and liquidity rules, it seems as if the liquidity coverage ratio proposal goes well beyond what was envisioned in Basel III. We believe that there should be consistency in the rule development and application of liquidity coverage ratios for Basel III participants.

c. Potential Harm to Economic Growth and Job Creation and Study of other Regulatory Initiatives

The CCMC is concerned that the proposed liquidity coverage ratio proposal will create significant disincentives for financial institutions to offer certain products and restrain the amount and type of capital available to businesses. These policy outcomes will harm capital formation and hamper the ability of businesses to grow and create jobs, while undermining the goal of the liquidity coverage ratio proposal to facilitate stable financial institutions.

We believe that the individual impacts of the liquidity coverage ratio proposal and the cumulative impact of other regulatory reform initiatives upon the financial system and the economy should be studied to understand the aggregate impact and consequences of these initiatives before any proposals are finalized and implemented. This is necessary to understand the impacts of the liquidity coverage ratio proposal upon capital formation for Main Street businesses in order to avoid adverse unintended consequences.

For instance, the CCMC is concerned that the treatment of undrawn credit commitments to SPEs will hamper the ability of businesses to access securitized lines of credit that are a major source of funding. As these credit facilities compose a large portion of debt financing for non-financial businesses this reduced access to such facilities will harm the ability of treasurers to meet short-term financing needs, as well as fuel the long-term growth of businesses.

Other concerns exist as well. Non-financial companies use derivatives, not as a means of financial speculation, but rather as a form of mitigation to hedge risk and acquire materials at a stable price. Accordingly, we believe that the calculation of collateral outflows relating to derivative transactions should take into account potential offsetting collateral inflows. This will allow for a realistic reflection of transactions and their impact upon the stability of a financial institution. Along the same lines, foreign exchange transactions that are considered derivatives under the liquidity coverage ratio proposal that offset or are part of the same swap arrangement should be treated as a single transaction with offsetting cash flows.

Reduced product offerings from financial institutions may impede businesses' ability to access capital and liquidity or to prudently mitigate risk. The unintended consequence of reduced credit availability and higher cost of capital will adversely impact *all* businesses, irrespective of size or sector. Higher financing costs may dramatically change businesses' ability to raise capital, ultimately slowing both economic growth and job creation. This is not taken into account in the cost-benefit analysis provided in the liquidity coverage ratio proposal.

The liquidity coverage ratio proposal is the latest in a series of initiatives that may hamper the ability of businesses to access the capital and liquidity needed to grow and operate. A comprehensive review of these initiatives illustrates:

- The recent leverage ratio proposal materially increases the minimum capital requirement by product relative to Basel III which may harm the ability of non-financial businesses to access markets to prudently mitigate risk or manage cash and liquidity;

- Capital surcharges upon Global Systemically Important Financial Institutions ("G-SIFIs") will force large internationally active banks to withdraw additional capital from productive capital formation streams;

- The complex regulatory regime imposed by the Volcker Rule is expected to impact the ability of non-financial businesses to enter the debt and equity markets by raising costs and creating barriers of entry to the capital markets. The issues with Trust Preferred Bonds and Collateralized Loan Obligations ("CLO's") are only the first set of problems to arise, and more are expected;
- If the Volcker Rule and other market reforms hamper capital formation, the next alternatives are commercial lines of credit; however, Basel III creates disincentives for banks to provide businesses with commercial lines of credit;

- Proposed Money Market Fund reform may harm the ability of non-financial businesses to access the short-term commercial paper markets and manage cash; and

- Other regulatory initiatives including derivatives regulation, which do not take into account non-financial end-user concerns, will impact the ability of non-financial companies to mitigate risk.

The combination of all of these initiatives could lead to an underperforming and less stable financial sector, create barriers to capital formation, and inhibit effective risk management for non-financial businesses and have unintended ramifications throughout the rest of the economy. The inability of businesses to engage in normal capital formation activities, efficient cash management, and effective risk allocation will raise costs and create inefficiencies adversely impacting economic growth and causing collateral harm to the financial sector.

In the CCMC's view, the statement in the liquidity coverage ratio proposal that business practices will not be altered is not a factually correct one.

d. Imposition of Liquidity Coverage Ratio Rules on Non-Bank Companies that Own Banks

The CCMC also has concerns regarding the scope of the liquidity coverage ratio proposal by sweeping in non-bank companies that own banks to help facilitate customer transactions. This business practice helps non-bank companies to be more efficient and to assist with customer financing, making the overall company stronger. An overbroad application of the proposed liquidity coverage ratio rules will harm these non-bank companies making financial practices less efficient and less able to assist customers with financing, thereby adversely impacting the stability of our capital markets. This will create a mismatch of regulation and apply banking regulations in a manner that will hamper the ability of such businesses to operate.

The regulators are proposing overly broad application of the proposed liquidity coverage ratio in several other respects as well. For example, with broker-dealers the liquidity coverage ratio proposal fails to consider other customer protection regimes in

play among affiliated broker-dealers and covered banks, such as the Securities and Exchange Commission's ("SEC") Rule 15c3-3, ("the Customer Protection Rule"). This failure to consider the cumulative regulatory obligations of entities covered by the liquidity ration proposal will result in conflicting, overlapping, and unduly burdensome regulatory obligations. By not taking into account the Consumer Protection Rule, the liquidity coverage ratio proposal would require a holding company with bank and broker-dealer subsidiaries to duplicate the funds deposited into the Consumer Protection Rule account if a client's free cash is swept into the affiliated bank. The broker-dealer must deposit cash or securities (more restrictive test on these than the liquidity coverage ratio proposals High Quality Liquid Asset ("HQLA") test into a segregated account held for the benefit of clients. Should a client request the return of its free cash, the amount held in this account may be reduced and returned to the broker-dealer. However, under the liquidity coverage ratio proposal any cash deposited into the bank would also require HQLA to meet the appropriate run-off rate, duplicating the account subject to the Consumer Protection Rule.

No brokerage client has lost his cash in a failed broker-dealer because of the operation of the Customer Protection Rule, yet the regulators have ignored this regime and instead impose their own liquidity regime. While this is one example, the application of the liquidity coverage ratio proposal to non-bank businesses that happen to own a bank for financing and cash management purposes will create other anomalies, redundancies and inefficiencies.

e. Enhanced Cost Benefit and Economic Analysis Needed Before Liquidity Coverage Ratio Rules can be Finalized

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

The liquidity coverage ratio proposal must follow the requirements of the Administrative Procedures Act ("APA"). Additionally, the Federal Reserve, FDIC and OCC have overlapping, but not identical legal obligations and internal practices for economic analysis when promulgating a rule. All of the regulators are subject to the Regulatory Flexibility Act ("RFA") and the Paperwork Reduction Act ("PRA"). The RFA requires assessment of the economic effect of regulations on small business and

consideration of less burdensome alternatives. The PRA requires assessment of the paperwork burden on small entities and ways to reduce or mitigate it.

All of the regulators must also comply with the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Among other things, the portion of SBREFA known as the Congressional Review Act states that rulemaking agencies must submit to GAO, and make available to each house of Congress, "a complete copy" of any cost-benefit analysis prepared for a final rule for which such an analysis is performed.[4]

Additionally, all of the regulators are subject to Riegle Community Development and Regulatory Improvement Act ('Riegle Act,' 12 U.S.C. §4802(a)). This law applies to all "Federal banking agencies" defined in Section 4801 of the Riegle Act (12 U.S.C. §1813) to include the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and (although not relevant to this rulemaking) the Office of Thrift Supervision. The Riegle Act mandates that "[i]n determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest - (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."

While the next section of the letter will deal with the "economically significant" standard, it is also important to note some of the other economic analysis requires that the regulators observe, or at least claim to observe, when promulgating rules. For example, the OCC observes the Unfunded Mandates Reform Act (UMRA) economic analysis requirements in its rulemakings.[5] Although the Federal Reserve is an independent agency, it has avowed that it will seek to abide by Executive Order 13563. 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."[6] As recently as October 24, 2011, the

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[4] 5 U.S.C. 801(a)(1)(b)(i))
[5] *See* Final Volcker Rule, SEC, at 882, available at http://www.sec.gov/rules/final/2013/bhca-1.pdf.
[6] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.

Federal Reserve wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and asserting that the Federal Reserve's use of such an analysis, since 1979[7], has mirrored the provisions of regulatory reform as articulated in Executive Order 13563.[8]

Therefore, the standards and considerations of costs and benefits and economic impacts overlap, but also vary across the agencies involved in the liquidity coverage ratio proposals. Given this haphazard and uncoordinated analysis under existing practices, the CCMC recommends that the regulators 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.[9] 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);

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[7] Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979)
[8] *See* letter from Scott Alvarez, General Counsel of the Federal Reserve, to Nicole Clowers, Director of Financial Markets and Community Investment of the General Accountability Office.
[9] 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.[10]

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.

ii. Failure to Provide an Appropriate Cost-benefit Analysis as Required Under the Unfunded Mandates Reform Act

As stated earlier, the OCC determines pursuant to UMRA if a rulemaking will cost state, local, or tribal governments or the ***private sector*** more than $100 million, using cost of living increases as permitted under UMRA. The threshold is now $141 million. The OCC estimates that the liquidity coverage ratio proposal will cost between $165 million and $246 million and is therefore an economically significant rulemaking. Therefore, the OCC should 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.[11]

To our knowledge this enhanced review under UMRA, has not been performed. Accordingly, the CCMC believes that an UMRA enhanced cost benefit analysis should be

[10] Executive Order 13563
[11] *See* 2 USC 1501, et. seq.

undertaken and released for public comment before the leverage coverage ratio proposal is finalized.

II. Request for Roundtable

The CCMC requests that the regulators hold a roundtable composed of financial institutions and their customers to identify unintended consequences, as well as the costs and burdens of the liquidity coverage ratio proposal imposed on stakeholders. Such a roundtable will allow the regulators to have a better understanding of how the liquidity coverage ratio proposal would work and how it may need to be changed to avoid unintended, adverse consequences.

The Volcker Rule is a case in point as to how such a roundtable can be a constructive tool in rulemaking. With the Volcker Rule, the CCMC requested increased public outreach, extended comment periods, and a re-proposal as a means to allow all stakeholders to have a holistic dialogue with regulators to identify the unintended consequences of the Volcker Rule and correct them before the regulation was finalized. Regulators did not heed the requests, and the problems with trust preferred bonds and CLOs erupted after the rule was finalized. More problems are expected to arise both before and after the conclusion of the conformance period. The trust preferred bond and CLO issues could have been identified early in the rule drafting process through increased public outreach and dialogue.

The CCMC believes that similar problems may occur that could harm the capital formation and liquidity needs of Bank's customers. We also believe that the proposed rule is likely to create problems for non-financial businesses that could spill over and harm the stability of financial institutions. Accordingly, we believe that a roundtable could be an effective means to ensuring a balanced, well--informed regulation that promotes the stability of financial institutions while avoiding unintended, harmful impacts on the overall economy.

III. Conclusion

The CCMC believes that: 1) the liquidity coverage ratio proposal is somewhat premature until the Basel III simplification effort is complete; 2) regulators need to

achieve a better understanding of the impacts of the proposal on capital formation and the collateral effects on financial stability; and 3) the proposal should go through a more enhanced cost-benefit analysis subject to public comment since it is an economically significant rulemaking. A roundtable will help the regulators better understand the means by which businesses raise capital and mitigate risk. Preventing normal business transactions from occurring or making those transactions inefficient can have a harmful impact upon all manner and size of businesses, their financial institutions, the economy, and society as a whole. As Zion's Bancorporation's experience with the Volcker Rule has demonstrated, one firm's response to a regulation can cost the economy well over one hundred millions of dollars.

We respectfully request that you take these concerns under consideration in the development of the liquidity coverage ratio proposal. We are willing to discuss our concerns with you in greater detail.

Sincerely,

Tom Quaadman