CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

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November 17, 2011

Ms. Jennifer J. Johnson
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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549-1090

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

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds. Docket No. OCC-2011-0014, RIN 1557-AD44; Docket No. R-14, RIN 7100 AD; RIN 2064-AD85; Release No. 34, RIN:3235-AL07.

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

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for the capital markets to fully function in a 21st century economy.

The CCMC is concerned that the business community and other stakeholders will not have sufficient time under the current schedule to thoroughly analyze and comment on the proposed rule, **Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and**

Private Equity Funds, 76 Fed. Reg. 68,846 (Nov. 7, 2011) ("the Volcker Rule Proposal"). Accordingly, the Chamber respectfully requests:

1) **The Volcker Rule Proposal to be withdrawn and re-proposed when the Commodity and Futures Trading Commission ("CFTC") publishes a proposed rule on this complex, multidisciplinary, and interlocking rule; and**

2) **When the Volcker Rule Proposal is re-proposed that the stakeholders be given a 150 day comment period, or in the alternative if there is no withdrawal that the current comment period be extended to 150 days, to conform to comment periods for far less complex rules.**

The CCMC's concerns are discussed in greater detail below.

Discussion

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") contains provisions placing restrictions on proprietary trading and hedge fund and private equity activities by financial institutions. These provisions, known as the "Volcker Rule," require a massive administrative effort to implement. The Volcker Rule Proposal was published in the Federal Register on November 7, 2011 and the deadline for submitting comments, ends on January 13, 2012. However, one of the agencies with implementation responsibilities, the CFTC, has not yet offered its contribution to the Volcker Rule Proposal. The issuance of the Volcker Rule Proposal in the absence of CFTC participation creates uncertainty as to whether and how non-financial companies would have to comply with the Volcker Rule, as well as an element of speculation in identifying those aspects of the imposing release that they need to address in comments. This uncertainty as to how certain entities may be affected by the proposed rule—which cannot be clarified until the CFTC proposes Volcker Rule implementation regulations—results in a fundamental lack of clarity and fairness in the regulatory process.

The truncated comment period also raises fundamental questions of fairness and due process, particularly when compared to other less complex rulemakings.

A. Re-Proposal

Implementation of the Volcker Rule could have wide-ranging impacts upon the capital formation and liquidity needed by businesses for daily operations and growth. Accordingly, it is vital that all potentially impacted stakeholders have a robust opportunity for comment. However, it is not even clear to many companies whether they fall within the new regime constructed by the rule. Many businesses, financial and non-financial, that thought they were exempt from the Volcker Rule, are slowly discovering that they may have to comply with certain aspects of the proposed implementing regulations. To take but one example, non-financial firms use derivatives as a crucial risk-mitigation tool—these vehicles are essential to ensuring predictable costs. Yet, under the regime envisioned by the Volker Rule Proposal, it is not clear whether and how the liquidity of the derivative markets— and, hence, their ability to enter into risk-mitigating swaps will be affected.

The CCMC believes that these concerns are cause for withdrawing the Volcker Rule Proposal and re-issuing proposed regulations in conjunction with the CFTC. Not only will such a process fully comply with the Administrative Procedures Act ("APA") by providing an opportunity for meaningful notice and comment by all potentially impacted stakeholders, but it will allow the CFTC to bring its expertise to bear on a complex, multi-disciplinary, and interlocking rule. For example, the CFTC may very well have concerns regarding the Volcker Rule Proposal that if addressed may improve the proposed rule itself.

What is more, Congress has spoken to these concerns in the Dodd-Frank Act and has made clear that agencies should coordinate in implementing the Volcker Rule. *See, e.g.*, 12 U.S.C. § 1851. As the CCMC noted in our October 11, 2011, letter to Secretary Geithner, (copy attached) only a fully coordinated rulemaking will allow for meaningful comment, expeditious implementation of final rule makings, and the coordinated rulemaking that Congress clearly intended.

To ensure that all parties understand how they may be affected and that all stakeholders have a meaningful opportunity to comment on the Volcker Rule Proposal, the CCMC respectfully requests that the Volcker Rule Proposal be withdrawn. To avoid the fundamental unfairness and administrative defects that will result from the regulatory process that is currently under way, we ask that all of the relevant agencies re-propose Volcker Rule regulations when they are able to present a unified and coherent vision for this new regulatory regime. This is what Congress and the regulated community expected when the Volcker Rule was enacted. By advancing a unified and coherent proposal, regulators can ensure all affected parties can meaningfully participate in the notice and comment process for Volcker Rule implementing regulations.

B. Extension of Comment Period

The CCMC respectfully requests that the length of the Volcker Rule Proposal comment period be extended to 150 days. The Volcker Rule Proposal propounds 400 questions, many of which are multi-pronged and comprise more than 1,000 questions.

Because of the complexity and massive size of the rule, stakeholders do not have enough time to analyze the Volcker Rule Proposal and comment on it in a meaningful and intelligent manner in this truncated time frame. This lack of a sufficient opportunity for comment not only harms stakeholders and raises serious questions under the APA and deprives your agencies of data needed to effectively and efficiently implement the Volcker Rule.

There is ample precedent for a 150 day comment period (for far less complex rules), such as:

- The opportunity to comment before the U.S. Coast Guard issued final regulations overhauling the rules governing the operation of small passenger vessels of less than 100 tons. The public initially had a 120 day comment period that was extended to 150 days; and

- A 150 day comment period on a proposed Environmental Protection Agency rule on geologic sequestration of carbon dioxide.

Agencies have provided120 day comment periods of rulemaking far less complex than the Volcker Rule on matters such as:

- Regulatory changes that the Department of Interior, Bureau of Indian Affairs, proposed to the operation of schools on Tribal Lands to comply with the "No Child Left Behind" Act; and

- A 2006 proposed rule by the Federal Deposit Insurance Corporation on Risk based Capital Standards Advanced Capital Adequacy Framework.

An extension of time will allow stakeholders to examine the scope of the proposed Volcker Rule regulations and to provide regulators with information that can assist them in crafting the final regulation.

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It is important that the Volcker Rule be implemented in a fair and judicious manner that does not inhibit the capital formation and the basic liquidity needed to foster economic growth. It is equally important that the process by which the Volcker Rule is implemented is fundamentally fair and transparent insofar as it allows all potential stakeholders to understand the regulatory structure that is being considered, and, accordingly, to engage in meaningful, constructive, and informed comments

This basic element of fundamental fairness will be absent until the CFTC concludes its work. Consequently, the Volcker Rule Proposal should be withdrawn and re-proposed when all relevant agencies can either join together in a joint rulemaking, or at least publish for comment in a coordinated process their various visions for effectuating the aspects of the Volcker Rule under their respective jurisdictions. Additionally, given the sheer complexity of the Volcker Rule Proposal, the comment period should be extended to 150 days to provide sufficient time for businesses to analyze it and provide meaningful comment.

Recognizing that the Volcker Rule Proposal may have significant impacts upon the capital formation and liquidity of non-financial companies, the CCMC makes these requests with the hope that regulators will take the time needed to complete and implement the Volcker Rule in a comprehensive, fair, and thoughtful manner. The CCMC is available to discuss these issues with you further.

Sincerely,

David Hirschmann

David Hirschmann

cc: The Honorable Gary Gensler, U.S. Commodity Futures Trading Commission