December 9, 2011

Chairman and Governors
Board of Governors of the Federal Reserve System
c/o Jennifer J. Johnson
Secretary
20th Street and Constitution Ave, NW
Washington, DC 20551
Docket No. R1432

Chairman and Directors
Federal Deposit Insurance Corporation
c/o Robert Feldman
Executive Secretary
550 17th Street, NW
Washington, DC 20429
RIN 3064- AD85

Acting Comptroller John G. Walsh
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2011-0014

Chairman and Commissioners
Securities and Exchange Commission
c/o Elizabeth M. Murphy
Secretary
100 F Street, NE
Washington, DC 20549-1090
File No. S7-14-11

Re: The Volcker Rule and Financial Reform Generally Must be Implemented Without Delay

Dear Ladies and Gentlemen:

You have recently received letters from the financial industry seeking to delay financial reform in general and the implementation of the Volcker Rule in particular.[1] As detailed below, those requests lack merit and should be rejected. We urge you to proceed with your rulemaking process as scheduled.

First and most importantly, delaying financial reform places the country and taxpayers at a heightened and continuing risk for another financial catastrophe that the country simply cannot afford, as President Obama[2] and Secretary Geithner[3] both stressed recently. The Dodd-Frank Act is designed to usher in an era of financial reform that protects taxpayers and the U.S. treasury, and a strong Volcker Rule is a key part.

1 On November 30, 2011, five trade associations sent a letter to the addressees above asking for an extension of the Volcker Rule comment period. (*See* http://www.politico.com/static/PPM170_111130_volcker_extension.html.) On November 17, 2011, the U.S. Chamber of Commerce issued a press release saying it sent a letter calling upon regulators to withdraw the proposed Volcker Rule entirely and start over again. (*See* http://www.uschamber.com/press/releases/2011/november/us-chamber-calls-re-proposal-and-delay-volcker-rule)

2 http://www.whitehouse.gov/the-press-office/2011/12/06/remarks-president-economy-osawatomie-kansas

3 http://www.treasury.gov/press-center/press-releases/Pages/tg1371.aspx

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Industry's claims that the Volcker Rule will "reduce market liquidity, capital formation and credit availability, and thereby hamper economic growth and job creation" disregard the fact that the financial crisis did more damage to those concerns than any rule or reform possibly could. In September 2008, there was **no** "market liquidity, capital formation [or] credit availability" and, since then, there has been little "economic growth" and even less "job creation." Industry amnesia more broadly must also be rejected: for example, it must be remembered that, but for the extraordinary actions of the U.S. government in the fall of 2008, the banks now lobbying to delay and defeat the Volcker Rule, and financial reform more broadly, would have ended up in bankruptcy, as their unrestrained conduct pushed the financial system and the economy to the brink of collapse.

In 2008, the country was looking into a financial abyss and facing a second Great Depression, in part because inadequate, non-existent or unenforced regulations allowed the financial industry to recklessly pursue profits without regard for the consequences, which largely fell on others. That era of little or no regulation, allowing the pursuit of private profit in complete disregard of the public interest, must end.

The only way to prevent another crisis of such magnitude – or worse – is to fundamentally strengthen regulation, oversight and accountability of the financial markets as fully and quickly as possible. That is the goal of the Dodd-Frank Act and the ongoing rulemaking process. The attempts by the financial industry and its allies to delay, if not kill, financial reform one rule at a time must be rejected.

<u>The Financial Industry Has Had and Still Has Ample Opportunity for Input into the Volcker Rule</u>

As detailed in a recent paper by Duke Law School professor Kimberly Krawiec, Wall Street's lobbying on the Volcker Rule has been overwhelming. Professor Krawiec's research, published on September 10, 2011, reveals that the industry and its allies accounted for **94 percent** of all federal agency contact on the Volcker Rule.

"[T]he powerful interest groups most affected by Dodd-Frank did not waste opportunities provided by the Volcker Rule's pervasive gaps and ambiguities…they actively lobbied agencies to adopt favorable definitions, interpretations, and exemptions," Professor Krawiec wrote.[4]

It is important to remember that the financial industry did not wait for the Proposed Rule to be proposed or published before it inundated the agencies with comments and meetings. Indeed, it has been lobbying on the Volcker rule for years. The financial industry worked the entire legislative process in 2009 and 2010, first to prevent the Volcker rule from being included and then to make it as weak as possible. Since the Dodd-Frank Act became law, it has lobbied the regulatory agencies to shape the proposed rule. With the comment period now open, lobbyists have yet more opportunity to submit written comments, which will be followed undoubtedly by more meetings. By any definition of reasonableness, the industry has had ample time to make their views known about the Volcker rule.

Industry has also raised concerns about the separate rulemaking timetable being followed by the Commodity Futures Trading Commission ("CFTC") on the Volcker Rule. Those concerns do not warrant delay by the other regulators. Nothing in the Dodd-Frank Act requires

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[4] http://scholarship.law.duke.edu/faculty_scholarship/2445/

that the rulemaking effort be joint, except as to the banking regulators. The statute simply requires the various agencies to "consult and coordinate with each other as appropriate… and to the extent possible." The law also charges the chairperson of the Financial Stability Oversight Council with the responsibility for coordination of the regulations, and there is every reason to expect that the Chairman will carry out that duty.

Moreover, if anything, industry will benefit from the fact that the CFTC has not proposed its rule yet. When it does, there will be yet another comment period, which will provide the industry another opportunity to voice its concerns and unleash its lobbying operation. Undoubtedly, industry will use the occasion of the CFTC rule to also submit additional comments to all the other agencies as well.

We also believe that attempts to delay and undermine implementation of the Volcker Rule are objectionable on an even more fundamental level. In its letter, the Chamber of Commerce ("Chamber") was right about one thing: the rule is complex. However, the Chamber fails to mention that much of that complexity is a direct result of lobbying by the financial industry and its allies seeking to change, kill or weaken the rule. This, of course, isn't new. That is exactly what they did during the legislative process, when they encumbered the prohibition against proprietary trading with qualifications, exceptions, and extensions.

President Obama called the Volcker Rule "a simple and common-sense reform" but also expressed concern because he feared "an army of industry lobbyists from Wall Street descending on Capitol Hill" to fight it.[5] The prediction turned out to be accurate. That "army of industry lobbyists" laid siege to the Volcker Rule, claiming that the world would virtually end if language was not added, changed, or otherwise amended to take into account the unending complaint-of-the-day. It is no surprise that this lobby campaign added length and complexity to the rule.

It is the height of hypocrisy for banks, their allies, and their lobbyists to insist – over the past three years – on innumerable provisions in the law and the rule, which add to their length and complexity, and then turn around and attack those very same provisions as too long and complex. They shouldn't be allowed to have it both ways.

Financial Reform is to Protect Taxpayers and the Treasury, not Bank Profits

The big banks garner the biggest prop trading profits and, therefore, have the most to lose from the Volcker Rule, leading to the legion of lobbyists and lawyers seeking to change or kill it. Professor Kraweic's paper notes that for a one-year period between July 2010 and July 2011, JPMorgan Chase officials met with rule-writers 17 times, followed by Morgan Stanley with 13 visits, and Goldman Sachs with 12 visits. Even excluding all the meetings their allies and trade groups had with regulators, the meetings by those three banks alone represented nearly 20 percent of all bank meetings on the Volcker Rule.[6] This lobbying also has also included the very top executives. For example, Goldman Sachs CEO Lloyd Blankfein met twice with top Securities and Exchange Commission officials.[7]

5 http://www.whitehouse.gov/photos-and-video/video/volcker-rule-financial-institutions#transcript
6 http://scholarship.law.duke.edu/faculty_scholarship/2445/ (page 26)
7 http://scholarship.law.duke.edu/faculty_scholarship/2445/ (page 28)

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This isn't unexpected. The financial industry is merely trying to protect the massive profits that their propriety trading generates. With wealth of this magnitude on the line, it is hardly surprising that one lobbyist for Goldman Sachs noted the bank is "totally freaked out about Volcker."[8]

It is well known that banks and others prefer not to have their extraordinarily profitable activities limited, no matter how dangerous they are to the financial system, the economy, and taxpayers. However, that is precisely why financial reform was needed and passed. It is also why regulators must implement the law as quickly and as fully as possible, disregarding industry's endless self-interested and highly questionable claims about each rule. The point of financial reform is to protect taxpayers and the treasury, not bank profits. That is why regulators have the duty and responsibility to implement the financial reform law and not the industry.

It is also no surprise that the banks and their allies never mention their enormous profits when lobbying to delay, defang, or gut a law, rule, or regulation. Those highly profitable interests are always well concealed behind claims of what's best for the country and the economy. But, it must never be forgotten that, beneath all those magnanimous and selfless claims, the banks are all talking their own book and trying desperately to avoid any regulation or rule that might reduce their profits. Nothing proves this point better than the fact that whenever they lobby to save the world from some supposed regulatory disaster, their remedy just happens to coincide with their economic interest.

Regulatory Reform Benefits Everyone, Including Wall Street

Regulatory reform that makes the financial system safer and less prone to failure and bailout is indisputably in the public's interest. The law and rules must be implemented faithfully so that the public and the treasury are spared from another financial catastrophe like the one that struck in 2008 and lingers to this day. Apart from the ongoing historically high un- and under-employment, plus record-breaking home foreclosure rates, and the seemingly endless recession, the U.S.'s medium-term debt-to-GDP increased about 50 percent, or roughly **$7 trillion** due to the crisis, according to the Congressional Budget Office.[9]

That, of course, has imposed a massive deficit reduction burden on the American people, which also has resulted in the regulatory agencies charged with implementing financial reform not having the resources to do their job properly. Just one example is the CFTC's budget, which presently is flat funded for this fiscal year. That could result in the forced layoff of as many as 60 employees.[10] Given they are the frontline cops on the commodity markets beat, including the $700 trillion over-the-counter markets, this funding shortfall has the potential to cripple essential financial reforms.

If the banks and their allies were serious about protecting the American people and the American economy, then they should have reined in their efforts to weaken the Volcker rule,

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8 http://www.reuters.com/article/2011/05/04/goldman-volcker-idUSN0418474320110504

9 CBO January 2008 forecast for debt in 2018 and the revision published by CBO in January 2010. *See* http://www.bloomberg.com/news/2011-11-07/middle-class-pays-for-financial-market-mistakes-simon-johnson.html And, this, of course, is only one way to calculate the cost of the crisis and it is an incomplete one at that. *See* Cost of the Crisis, http://www.bettermarkets.com/cost-crisis

10 http://www.politico.com/news/stories/1111/68777.html

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and they should have instead lobbied for full and adequate funding for the regulatory agencies charged with financial reform.[11] They did not. Those actions speak louder than any of their words.

The Volcker Rule, combined with other regulations, is an essential measure to stop large, too-big-to-fail banks from making huge, highly leveraged, swing-for-the-fences bets to juice their bonuses, while shifting the risk of catastrophic loss to the public. The industry's relentless effort to derail or delay this rule must be rejected.

The regulatory reforms embodied in the Volcker Rule and all of the other Dodd-Frank Act rules need to be implemented without delay to establish truly fair, stable, and transparent markets that are less prone to failure, crisis, and bailouts. That is the best way to prevent another financial disaster and ensure that there is adequate "market liquidity, capital formation and credit availability" as well as "economic growth and job creation."

Sincerely,

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