September 21, 2017

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

Re: Proprietary Trading and Certain Interests in and Relationships with Covered Funds (Volcker Rule); Request for Public Input [Docket ID OCC–2017–0014]

Mr. Noreika:

The undersigned organizations[1] (collectively, the Associations) are pleased to respond to your request for public input regarding the Volcker Rule (the Rule). Our members represent U.S. commercial and multifamily real estate investors, lenders and borrowers – a market valued at an estimated $6.3 trillion supported by $3.9 trillion of commercial real estate (CRE) debt.[2]

Individually and collectively, many of the undersigned real estate trade associations have raised concerns to Congress and U.S. financial regulatory agencies regarding the challenges to Commercial Mortgage Backed Securities (CMBS) market liquidity posed by Basel and Dodd-Frank capital requirements. Such concerns have been accompanied by recommendations for rule revisions that allow for a well-regulated and liquid CRE finance industry.

Among those concerns is that the Volcker Rule has impaired secondary markets for CMBS and other traded securities. Accordingly, the Associations recommend that revisions to the Rule target the following:

- Facilitate greater discretion and flexibility in making markets and hedging;
- Limit applicability to those firms with complex trading businesses; and
- Streamline compliance and reporting requirements, including leveraging current risk-based reporting formats and tailoring requirements to trading-based businesses.

We, therefore, support the Office of the Comptroller of the Currency's (OCC) effort to gather information to support changes to the Rule. We also appreciate the OCC's view that "there is broad recognition that the final rule should be improved both in design and in application,"[3] a view shared with the U.S. Department of the Treasury, which concluded in a June report that the design and implementation of the Volcker Rule "far overshot the mark."[4]

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[1] The undersigned organizations are CRE Finance Council, International Council of Shopping Centers, Mortgage Bankers Association, National Association of Home Builders, NAIOP, National Multifamily Housing Council, and The Real Estate Roundtable.
[2] Federal Reserve, Flow of Funds. https://www.federalreserve.gov/releases/z1/current/default.htm
[3] OCC Request for Information 82 FR 36692 (Aug. 7, 2017).
[4] U.S. Dept. of the Treasury, *A Financial System That Creates Economic Opportunities; Banks and Credit Unions; Report to President Donald J. Trump,* 71-78 (June 2017); https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf

The CMBS Market Provides Meaningful Funding for the Real Economy

To support necessary changes to the Volcker Rule, we highlight in this letter the importance of the CMBS market and the unintended consequences of the Rule on the CRE finance industry overall. Our hope is that the OCC and other Agencies can modify the Rule to serve its public policy purposes without impairing CMBS liquidity.

The commercial real estate industry plays a critical role in the U.S. economy through the investment in and financing of office buildings, industrial complexes, multifamily housing (including affordable housing), shopping centers, hotels, and other types of commercial real estate that help form the backbone of the American economy.

The CMBS market is recognized as an important source of debt for commercial and multifamily real estate – second only to commercial bank lending. The CMBS conduit market pools commercial mortgages ranging in size from less than $2 million to more than $100 million, with a median loan balance of $8 million, which makes CMBS a significant source of credit for lending to small and mid-sized businesses. CMBS continues to provide between $50-$100 billion in annual funding to grocery stores, apartments, office buildings and warehouses in cities such as Louisville, Kentucky and Wichita, Kansas.

Market-making is essential to the CMBS market and its investors. The market knowledge, balance sheets and the global platforms of the bank broker-dealers are essential to CMBS market liquidity. The health of any secondary market is a critical determinant of investor appetite for primary issuance, and liquidity should not be damaged without a counter-balancing social or market good.

Unintended Consequences of Volcker Rule on CMBS and CRE Finance

The Volcker Rule, codified in Section 619 of Dodd-Frank, prohibits banking institutions from engaging in proprietary trading activities for their own accounts. Securitization and securitization market-making activities are specifically exempt from the scope of the rule under the statute.

In general, the prevailing sentiment across the industry is that the Volcker Rule is ***vague, overly broad, and complicated***. Moreover, the final Rule's broad definition of 'covered fund' has swept in certain types of securitization issues and activities that have made normal 'course-of-business' CMBS market-making challenging for banks (who typically act as market makers and liquidity providers for institutional investors, including pension funds, insurance companies, banks, and money managers).[5] As OCC supervisory personnel have likely observed in supervised banks engaged in CMBS activity, many market makers have reined in their normal course of business market-making activities on behalf of their customers rather than mistakenly running afoul of the Rule.

[5] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, Notice of Proposed Rulemaking, 76 Fed. Reg. 68846 (Nov. 7, 2011).

That reining in of market making, in turn, impairs CMBS liquidity. While there are many factors that affect liquidity, the reduction in market-making capability triggered by the Volcker Rule reduces liquidity in normalized markets, with the impact even further exaggerated during times of heightened market volatility. As is suggested by Treasury's comment that the Volcker Rule "overshot the mark," that impairment in liquidity is not justified by a corresponding positive impact on the Rule's safety and soundness objectives.

The contraction in CMBS liquidity not only negatively affects the ability to trade in and out of positions in the secondary market but also quells the appetite for new-issue CMBS in the primary market. Investors generally attest to the fact that they choose CMBS over other types of CRE debt specifically because of three defining features: 1) the ability to target a certain risk-reward profile in terms of credit rating, average life, and duration); 2) heightened credit transparency (including monthly asset-level disclosures); and 3) traditionally sound market liquidity that allows investors to manage their portfolios dynamically.

Reduced liquidity is a concern shared by all CMBS market participants, including issuers and investors alike who do not always see eye-to-eye on industry regulation. Reduced liquidity also negatively affects CMBS borrowers. Investors are more inclined to demand wider spreads on CMBS bonds (translating into lower pricing on new-issue CMBS offerings) in light of reduced secondary-market liquidity. This dynamic in turn drives up the cost of borrowing for commercial and multifamily real estate owners.

Conclusion

We support the OCC's efforts to ensure the safety and soundness of the banking system through revisions to the Volcker Rule. At the same time, we believe that the Volcker Rule can constrain overall liquidity, particularly in times of stress and heightened market volatility, which has a long-term impact on the availability and cost of credit to commercial and multifamily real estate borrowers.

We appreciate this opportunity to comment, and we look forward to working constructively with the OCC and other Agencies on this important matter.

Sincerely,

Commercial Real Estate Finance Council
International Council of Shopping Centers
Mortgage Bankers Association
National Association of Home Builders
NAIOP, the Commercial Real Estate Development Association
National Multifamily Housing Council
The Real Estate Roundtable

Appendix – Undersigned Associations

CRE Finance Council
The Voice of Commercial Real Estate Finance

The CRE Finance Council (CREFC) is the trade association for the $3.6 trillion commercial real estate finance industry. More than 280 companies and 8,000 individuals are members of CREFC. Member firms include balance sheet and securitized lenders, loan and bond investors, private equity firms, servicers and rating agencies, among others. Our industry plays a critical role in the financing of office buildings, industrial and warehouse properties, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy. CREFC promotes liquidity, transparency and efficiency in the commercial real estate finance markets. It does this by acting as a legislative and regulatory advocate for the industry, playing a vital role in setting market standards and best practices, and providing education for market participants.

ICSC

The International Council of Shopping Centers (ICSC) is an association that serves the global retail real estate industry. We provide our 70,000+ member network in over 100 countries with invaluable resources, connections and industry insights and actively work together to shape public policy.

MBA
MORTGAGE BANKERS ASSOCIATION

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

The National Association of Home Builders (NAHB) helps its members build communities. Each year, NAHB's members construct about 80% of the new homes built in the United States, both single-family and multifamily. A federation of more than 700 state and local associations, NAHB represents more than 140,000 members. About one-third are home builders and remodelers. The rest work in closely related specialties such as sales and marketing, housing finance, and manufacturing and supplying building materials.

NAIOP, the Commercial Real Estate Development Association, began in 1967 and has retained through all these years its core group of developer members. NAIOP is a leading commercial real estate industry provider of unparalleled networking opportunities, educational programs, research on trends and innovations and strong legislative representation.

For more than 20 years, the National Multifamily Housing Council (NMHC) represents the principal officers of the apartment industry's largest and most prominent firms.

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.