March 5, 2014

Mr. Robert deV. Frierson, Secretary
Attention: Docket No. R-1476; RIN 7100-AE08
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Re: Extensions of Credit by Federal Reserve Banks, 79 Fed. Reg. 615 (the "**Proposed Rule**")

Dear Sir or Madam:

The Committee on Capital Markets Regulation (the "**Committee**") is grateful for the opportunity to comment on the Proposed Rule[1] released by the Board of Governors of the Federal Reserve System (the "**Board**"), which would implement sections 1101 and 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").[2]

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-three leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and directed by Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

The Proposed Rule implements sections 1101 and 1103 of the Dodd-Frank Act, which amend the authority of Federal Reserve Banks to provide emergency lending pursuant to section 13(3) of the Federal Reserve Act.[3] Under section 1101, the Federal Reserve Banks can no longer lend to an individual institution through section 13(3) emergency lending authority.[4] Section 13(3) lending must now be conducted through a program or facility with broad-based eligibility.[5] Furthermore, all emergency lending is now subject to "the prior approval of the Secretary of the Treasury"[6] and is governed by policies agreed to by the Treasury ensuring that section 13(3) loans are adequately collateralized and are never extended to insolvent borrowers.[7]

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[1] Extensions of Credit by Federal Reserve Banks, 79 Fed. Reg. 615 (proposed Jan. 6, 2014).
[2] Dodd-Frank Act § 1101, 12 U.S.C. § 343 (2012); Dodd-Frank Act § 1103, 12 U.S.C. § 225b (2012).
[3] Extensions of Credit by Federal Reserve Banks, 79 Fed. Reg. 615 (proposed Jan. 6, 2014).
[4] Dodd-Frank Act § 1101, 12 U.S.C. § 343 (2012).
[5] *Id*
[6] *Id*. at §1101(a)(6) ("(B) . . (iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury").
[7] *Id*.

In general, the text of the Proposed Rule follows verbatim the language of the Dodd-Frank Act. As a result, the Proposed Rule largely tracks the Dodd-Frank Act legislation without extending the regulations beyond the statutory requirements. The Committee is supportive of the Proposed Rules in that respect and commends the Board's approach in retaining as much flexibility and discretion as possible in conducting emergency lending programs to provide liquidity in a financial crisis, while abiding by the requirements of the Dodd-Frank Act. By avoiding overly restrictive language in the Proposed Rule, the Board did not limit its ability to provide liquidity in a crisis situation beyond the restrictions already legislated by Dodd-Frank. To limit the alternatives of the Federal Reserve to provide liquidity in times of crisis may have severe consequences. The Committee is in the process of broadly reviewing the government's capacity to respond to a liquidity crisis (contagion) such as the kind we experienced in 2008. This includes an evaluation of the restrictions placed on the Federal Reserve's power as lender of last resort by Dodd-Frank. We leave those bigger issues for completion of our review.

While the Committee does commend the Board for its general approach in drafting the Proposed Rule, we do believe that the Board should be clearer about the interpretation of the "broad-based eligibility" requirement[8] for emergency lending programs. If an emergency lending program is opened up to a market or sector of the financial system, as required by the Dodd-Frank Act,[9] but only accessed initially by a single or a few institutions, the program should still be considered "broad-based." As was witnessed during the financial crisis, financial institutions do not face liquidity crises at the same precise moment. If a market sector is facing a liquidity crisis, a few institutions will have more pressing liquidity needs than others. Once those institutions solve their liquidity problems through the emergency facility, private liquidity may flow again to the rest of the market. As a result, other financial institutions that were on the cusp of needing Fed liquidity may no longer need to tap the emergency facility if private alternatives have opened up again. Under this scenario, the broad-based program may only be accessed by a select few institutions. The Committee believes that such a program should not be considered as lending to individual institutions under the guise of broad-based eligibility, but rather should be encouraged by the Board.

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Thank you very much for your consideration of the Committee's opinion. Should you have any questions or concerns, please do not hesitate to contact the Committee's Director, Prof. Hal S. Scott (hscott@law.harvard.edu), its Executive Director of Research, C. Wallace DeWitt (cwdewitt@capmktsreg.org), or Brian Johnson, Research Fellow (bjohnson@capmktsreg.org), at your convenience.

Respectfully submitted,

Hal S. Scott
DIRECTOR

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[8] *See* Extensions of Credit by Federal Reserve Banks, 79 Fed. Reg. 615, 616-617 (proposed Jan. 6, 2014).

[9] Dodd-Frank Act § 1101, 12 U.S.C. § 343 (2012).