Vanderbilt

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Robert E. Feldman, Executive Secretary Attention: Comments/Legal ESS Federal Deposit Insurance Corporation 550 17th Street NW Washington, DC 20429	Alfred M. Pollard, General Counsel Attention: Comments/RIN 2590-AA58 Federal Housing Finance Agency, Eighth Floor 400 Seventh Street, SW Washington, DC 20024
Mary Rupp, Secretary of the Board National Credit Union Administration 1775 Duke Street Alexandria, VA 22314-3428	Office of the Comptroller of the Currency 250 E Street, SW, Mail Stop 2-3 Washington DC 20219

Re: Appraisals for Higher Risk Mortgage Loans
Truth in Lending Act (TILA) & Regulation Z

Board: Docket No. R-1443	Bureau: Docket No. CFPB-2012-0031
FDIC: Truth in Lending Act (Regulation Z)	FHFA: RIN 2590-AA58
NCUA: RIN 3133-AE04	OCC: Appraisals for Higher-Risk Mortgage Loans

Dear Ladies and Gentlemen:

Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") is writing to comment on the "TILA appraisal rule" identified above. The TILA appraisal rule has been jointly issued by the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection ("the CFPB"), the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively "the Agencies"). Vanderbilt's comments are addressed to the CFPB's version of the TILA appraisal rule, which appears at 77 Federal Register 54721 (September 5, 2012).

Vanderbilt specializes in the financing of factory-built housing, primarily manufactured homes ("MHs"). Vanderbilt makes both "home only" loans (secured solely by the MH as personal property, also known as "chattel" loans), and "land home" loans (secured both by the MH and the land on which it is located). Vanderbilt is a member of the Clayton Homes family of companies. Clayton Homes is one of the nation's largest home builders, having produced more than 72,000 factory-built single family homes over the past 3 years, including 22,792 homes in 2011.

The factory-built housing industry is a key provider of jobs and affordable housing in the United States. The industry includes about 2,500 retailer locations, over 120 manufacturing locations, plus thousands of MH community locations and related component and supply providers. In 2011, according to the

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Manufactured Housing Institute ("MHI"), the industry accounted for over 58,000 jobs. According to 2006-2010 Census Bureau data, there were 8.7 million MHs in the country, which MHs comprised 6.7% of the nation's total housing units and 9.9% of the nation's total single family units (both detached and attached). According to 2011 Census Bureau data, 72% of new homes sold under $125,000 were MHs, as were 47% of new homes sold under $150,000 and 27% of new homes sold under $200,000. Again according to MHI, over 60% of all MH buyers finance their purchases with home only loans, and over 60% of all MHs are located in rural areas. Since 2011, Vanderbilt's loans have been 54% home only (8,198 loans) and 46% land home (7,066 loans). Our average home only loan amount has been $47,167, with an average Beacon score of 649 (excluding zero scores). Our average land home loan amount has been $76,003, with an average Beacon score of 630 (again excluding zero scores).

1. <u>The Agencies should exclude ***all*** MH loans, both home only and land home, from the definition of "higher-risk mortgage loan." (Replying to Questions 11 and 14.)</u>

The Agencies are proposing to exclude home only, but not land home, MH loans from the TILA appraisal rule, as follows: "Notwithstanding paragraph (a)(2)(i) of this section, a *higher-risk mortgage loan* does not include:... (C) A loan secured ***solely by*** a residential structure." (Proposed §1026.XX(a)(2)(ii)(C). 77 FR at 54772. Emphasis added.)

For the reasons given below, the Agencies' proposed exclusion should be expanded to cover ***all*** MH loans, both home only and land home, as follows: "Notwithstanding paragraph (a)(2)(i) of this section, a *higher-risk mortgage loan* does not include:... (C) A loan secured ***in whole or in part by a manufactured home as defined in HUD regulation 24 CFR 3280.2***." (Emphasis added.) Replacing the words "solely by" with "in whole or in part by" will include land home MH loans within the proposed exclusion. At the same time, replacing "residential structure" with the "manufactured home" definition from Regulation X section 1024.2(b) will keep site-built homes out of the proposed exclusion, thereby limiting the proposed exclusion to MHs, which are the most adversely affected by the appraisal requirements. This limitation also appears to be consistent with the Agencies' intent. (See 77 FR at 54732-54733.)

The Dodd-Frank Act expressly authorizes the Agencies to exempt any class of loans from the TILA appraisal rule upon determining that the exemption is in the public interest and promotes the safety and soundness of creditors. For the reasons given below, excluding all MH loans, both home only and land home, from the TILA appraisal rule will meet these exemption standards. (Dodd-Frank Act § 1471, adding new §129H(b)(4)(B) to the Truth in Lending Act.)

In a nutshell, the Agencies' rationale for the limited scope of the proposed exclusion is that traditional real estate appraisals performed by certified or licensed appraisers "are not appropriate or feasible" for home only MH loans, but "are feasible" for land home MH loans. 77 FR at 54733. Vanderbilt agrees as far as home only MH loans are concerned, but we strongly disagree with the Agencies' understanding that traditional appraisals "are feasible" for the great majority of land home MH loans.

As explained below, the prohibitive problems with requiring traditional appraisals for MH loans result from the presence of the MHs in the transactions, rather than from whether or not the MHs happen to be sold and financed by themselves or as part of land home packages. Thus the very same reasons why traditional appraisals won't work for home only loans will also apply with equal force to the great majority of land home loans, as follows:

a. Lack of sufficient qualified appraisers

Certified or licensed appraisers are typically trained to perform site-built and land only appraisals. For the most part, they are neither trained nor experienced with appraising MHs, either by themselves or along with the land. Most appraisers, for example, don't know about (and physically cannot find) the HUD seals and data sheets that are located on every MH unit. These HUD seals and data sheets contain compliance certifications and MH specifications that are critical for determining value. An MH appraisal cannot be performed without examining these items, regardless of whether the appraisal will cover just the MH itself or both the MH and the land. In addition, those appraisers who are qualified by training and experience to perform MH appraisals, unfortunately, are very few and far between. In many rural areas, where the majority of MHs are located, there are literally no qualified MH appraisers who are available to do the job, regardless of whether the job is for a home only or land home transaction.

b. Lack of sufficient comparable sales

Other than in California, which has a limited data base of resale prices for home only transactions, there are virtually no comparable sales transactions that are available for use when performing appraisals for MH loans, whether they be home only or land home. Without sufficient comparable sales transactions, appraisers will not be able to develop accurate valuations for MH loans, for either home only or land home transactions. This lack of comparable sales is especially severe in rural areas where new and used MH sales and loans tend to be concentrated.

i. Home only

Sufficient comparable sales for home only transactions simply don't exist anywhere other than in California. Home only transactions generally are not listed on MLS services. Consequently, there is no broadly available data base of any of the home only sales that are made by MH retailers or manufacturers, by MH communities, or by individual MH owners (selling direct to buyers).

ii. Land home

Traditional appraisals – where both the home and the land are appraised together – typically are performed only for FHA Title II land home MH loans, and also for those FHA Title I land home loans that have a used MH that is already located on the land. Traditional appraisals typically ***are not*** performed for conventional (i.e., non-GSE) land home MH loans, or for FHA Title I land home loans that finance the purchase of a new MH. Thus Vanderbilt infers that the Agencies' understanding that traditional appraisals "are feasible" for land home MH loans must be based on these certain FHA loan types, which typically represent a very small fraction of all land home MH loans. At Vanderbilt, for example, less than one-half of 1% of its land home MH loans since 2011 have been FHA loans (304 out of 7,066).

A. FHA Title I and II Lending

Even for FHA land home loans, traditional appraisals are difficult to obtain and are prone to a high failure rate (i.e., when the appraised value is less than the sale price). The main reason for these problems is that HUD guidelines require the use of MH comparable sales for FHA land home loans. Site built comparable sales cannot be used. MH comparable sales, especially in rural areas, tend to be unavailable or

inadequate because they are too few in number, or they are located at greater distances from the customer's site (e.g., over 25 miles away), or they are too much older than the MH that will secure the new loan, or they consist of foreclosed MHs that were re-sold at reduced prices. According to an informal MHI survey earlier this year, traditional appraisals on FHA land home loans fail around 20% of the time, due to the lack or inadequacy of comparable sales. At Vanderbilt, the failure rate has been even higher, around 30%.

B. Conventional Lending

The industry's experience with FHA land home loans should be both instructive and sobering. The 20% to 30% failure rate of traditional appraisals on FHA land home loans is due to the collateral type (MHs), not the loan type (FHA). Thus if the TILA appraisal rule were to take effect as proposed, we should expect that the 20% to 30% failure rate for appraisals on FHA land home loans will also apply to conventional land home loans. For Vanderbilt, a 30% failure rate for appraisals on our 6,762 conventional land home loans since 2011 would have eliminated 2,029 loans, thereby denying affordable housing to several thousand people (assuming the typical loan represents a family in need of housing as opposed to single occupancy purchasers).

c. MHs typically are not available for appraisal

The new or used MHs that will secure a home only or land home MH loan typically will not be available for a physical visit of the interior of the MH until after the closing of the loan, much less when the appraisal is ordered. Thus it will be physically impossible for most new or used MH loans to comply with the proposed requirement for the lender to obtain, prior to consummation, a written appraisal that includes "a physical visit of the interior of the property that will secure the transaction." (Proposed §1026.XX(b)(1). 77 FR at 54772.) Moreover, even if the proposed interior visit requirement were to be removed, a traditional appraisal for most new or used MH loans will still be physically impossible due to the unavailability of the MH for appraisal, and the resulting inability of the appraiser to examine the HUD seals and data sheets (see #1.a above).

i. New MHs

Typically the MH will not be delivered and installed at the customer's site, and in many cases not even manufactured, until after the home only or land home MH loan has closed. The appraisal, of course, must be obtained well before closing. Thus the new MH literally will not be available for inspection at the customer's site when the appraisal is ordered. Even in those cases when a retailer already has a suitable new MH in inventory at its sales lot, the MH still will not be delivered and installed until after closing. Thus again, the new MH will not be available for an on-site inspection when the appraisal is ordered. As with construction loans, on-site interior inspections of new MHs that will secure home only and land home MH loans are not feasible because new MHs are still in the process of being manufactured and/or delivered and installed when appraisals are ordered. For essentially this same reason, the Agencies are proposing to exclude construction loans from the TILA appraisal rule: "In construction loan transactions, an interior visit of the property securing the loan

is generally not feasible because construction loans provide financing for homes that are proposed to be built or are in the process of being built." (77 FR at 54733.) The Agencies should apply this same logic so as to exclude all MH transactions from the TILA appraisal rule.

ii. Used MHs

A used MH, by definition, has been previously occupied. Used MHs typically become available for re-sale either by the original owners trading them in on new MH purchases, or by the lenders' recovery of the used MHs from the original owners after default. Under either of these circumstances, the used MHs typically are relocated to a retailer's sales lot for re-sale. At that point, the same chronology will apply for used MHs as that described above for new MHs: the appraisal will be ordered well before closing of the new customer's home only or land home MH loan, but the used MH will not be delivered and installed, and thus will not be available for on-site inspection, until after closing. Again, as with construction loans, on-site interior inspections of the used MHs that will secure chattel MH loans are not feasible. (77 FR at 54733.) Thus again, the Agencies should apply this same logic so as to exclude all MH transactions from the TILA appraisal rule.

d. Land often is not available for appraisal

Not only are the MHs themselves typically not available for appraisal before closing, but the land on which the MHs will be located oftentimes is not identified by the customer until well after the immediate post-application stage, when appraisals typically get ordered. For both home only and land home transactions, buyers often pick out their MH and apply for their loan before they decide where to locate the MH. This common pattern for MH transactions, of course, is fundamentally different from typical site built transactions, where both the home and the land are identified early on, before the loan application is submitted. Thus in the world of MH retailing and lending, not only the MH but often the land, as well, is not available for appraisal when the appraisal is ordered.

e. Prohibitive costs of traditional appraisals

As noted above, MH loans typically are low balance loans. At Vanderbilt, for example, our average home only loan amount since 2011 has been $47,167. Our average land home loan amount for the same period has been $76,003. Thus in the context of MH lending, the cost of a traditional appraisal will usually be prohibitive, which will result in far fewer MH sales and loans being made, which will significantly reduce the availability of affordable housing in the United States and the total number of jobs provided by the factory-built housing industry.

i. Land Home

Vanderbilt's typical cost for a traditional appraisal for FHA Title I and II land home loans is in the range of $500 to $600. For these loans, the typical appraised value for the MH and the land, taken together, is about $120,000, which is on the high end of Vanderbilt's range of land home loan amounts. Unfortunately, appraisal costs do not vary by loan type. An appraisal that typically costs $500 to $600 for a relatively high balance FHA land home loan will also cost $500 to $600 for a much lower balance conventional land home loan. Using Vanderbilt's $76,003 average land home loan amount

since 2011, a traditional appraisal that cost $500 would have added 66 basis points of cost to the transaction. Even worse, a traditional appraisal that cost $600 would have added 79 basis points of cost.

ii. Home Only

Similarly, Vanderbilt's typical cost for a traditional appraisal for FHA Title I home only loans secured by used MHs is $450. Using Vanderbilt's $47,167 average home only loan amount since 2011, a traditional appraisal that cost $450 would have added 95 basis points of cost to the transaction.

In both cases – for home only and land home MH loans – nearly 1% of additional cost is added for the consumer for an appraisal that, we believe, will not provide an accurate valuation of the transaction, and therefore will provide minimal benefit to the consumer.

2. In addition to keeping the current definition of "finance charge" and resulting APR (see #3 below), the Agencies should also exercise their exemption authority to effectively remove ***all*** MH loans, both home only and land home, from the definition of "higher-risk mortgage loan." (Replying to Questions 8 and 14.)

The proposed threshold for the amount by which the APR must exceed the applicable APOR for a first lien home loan to qualify as a "higher-risk mortgage loan" is 1.5 or more percentage points, for loans with principal amounts of less than $417,000 (the "jumbo" loan threshold as currently set by Freddie Mac). (Proposed §1026.XX(a)(2)(i)(A). 77 FR at 54772.) This 1.5 percent-or-more threshold for first lien higher-risk mortgage loans is the same as the 1.5 percent-or-more threshold that currently applies for identifying "higher priced mortgage loans" ("HPMLs") under Regulation Z (§1026.35(a)(1)). Likewise, for HMDA purposes, Regulation C currently uses this same 1.5 percent-or-more threshold for requiring the reporting of HPMLs (§1003.4(a)(12)(i)).

In the section-by-section analysis of the TILA appraisal rule, the Agencies have noted, at least twice, their current lack of sufficient data for estimating how the proposed more inclusive "finance charge" will affect the number of loans that will exceed the 1.5 percent-or-more threshold for first lien higher-risk mortgage loans. (77 FR at 54730, 54731.) However, of more immediate concern to Vanderbilt is the likely effect that the proposed threshold will have ***even if*** the Agencies keep the current definition of "finance charge." Because the same 1.5 percent-or-more threshold applies to both "higher-risk mortgage loans" and HPMLs, the 2011 HMDA data that the FFIEC recently released is both instructive and very concerning. As the FFIEC noted in its joint press release dated September 18, 2012:

> "The 2011 HMDA data also include information on loan pricing. The 2011 data reflect the second full year of data reported under revised loan pricing rules, which determine whether a loan is classified as "higher priced." Lenders now report loans with annual percentage rates (APRs) that are 1.5 percentage points for first lien loans and 3.5 percentage points for junior lien loans above the average prime offer rates (APORs), estimated using data reported by Freddie Mac in its Primary Mortgage Market Survey.
>
> "The data on the incidence of higher-priced lending show that a small minority of first lien loans in 2011 have APRs that exceeded the loan price reporting thresholds. ***The principal exception was for conventional first lien loans used to purchase manufactured homes; for such loans 82 percent exceeded the reporting threshold in 2011.*** For conventional first lien loans used to purchase site-built properties, about 3.9 percent of the reported loans exceeded

the reporting threshold (up from 3.3 percent in 2010). The incidence of higher-priced lending for FHA-insured loans on site-built properties (3.8 percent in 2011) is virtually the same as for conventional loans. The incidence of higher-priced lending for loans backed by VA guarantees is notably smaller than for either conventional or FHA-insured loans; only about 0.4 percent of VA-guaranteed loans were higher priced in 2011." (Emphasis added.)
http://www.consumerfinance.gov/pressreleases/federal-financial-institutions-examination-council-announces-availability-of-2011-data-on-mortgage-lending/

Thus, ***even if*** the Agencies keep the current definition of "finance charge," the 2011 HMDA data shows that a whopping 82% of conventional first lien MH loans, both home only and land home, would have been classified as "higher-risk mortgage loans" (due to most MH lenders' high cost of funds and high origination and servicing costs in relation to typical loan amounts). Presumably up to 100% of conventional first lien MH loans would be classified as "higher-risk mortgage loans" if the Agencies were to adopt the more inclusive definition of "finance charge." Such a result, if the TILA appraisal rule were to apply, will effectively eliminate the MH loan business in the United States. The elimination of MH lending, in turn, will have disastrous effects on the jobs provided by the factory-built housing industry, and also on the availability of affordable housing for low to moderate income families in this country.

To avoid these disastrous effects, the Agencies should not only keep the current definition of "finance charge" and resulting APR, they should also exercise their exemption authority to effectively remove ***all*** MH loans, both home only and land home, from the definition of "higher-risk mortgage loan." The Agencies should act in either one of two ways, either one of which will serve the public interest and will promote the safety and soundness of MH lenders by allowing the factory-built housing industry to continue to provide its high levels of jobs and affordable housing, as follows:

a. Question 8: By modifying the proposed thresholds at which first lien MH loans, both home only and land home, will be classified as "higher-risk mortgage loans" in an amount sufficient to effectively remove ***all*** MH loans from this definition, or
b. Question 14: By excluding the class of ***all*** MH loans, both home only and land home, from the definition of "higher-risk mortgage loan."

3. The Agencies should keep the current definition of "finance charge" and resulting APR. (Replying to Questions 6 to 9.)

By separate letters dated September 5, 2012, Vanderbilt has previously commented on the CFPB's proposed rules for (i) Integrated Mortgage Disclosures under TILA, Regulation Z, and RESPA, Regulation X (77 FR 51115, August 23, 2012)(see Comment Tracking Number 811080b5), and (ii) High-Cost Mortgage (HOEPA) and Home Ownership Counseling Amendments under TILA, Regulation Z, and RESPA, Regulation X (77 FR 49089, August 15, 2012)(see Comment Tracking Number 811082a5). In short, for the reasons set forth in Vanderbilt's foregoing comment letters, the Agencies should keep the current definition of "finance charge" (rather than adopt the proposed more inclusive definition), and they should also keep the APR alternative for the HOEPA rate thresholds (rather than adopt the "transaction coverage rate" alternative). (See Comment Tracking Number 811080b5 at pages 3-11, and Comment Tracking Number 811082a5 at pages 14-15.)

4. <u>The Agencies should clarify that "the price at which the seller acquired the property" must be limited to "retail" prices and/or acquisitions, rather than including "wholesale" prices and/or acquisitions. (Replying to Questions 20 & 25.)</u>

If, under the Agencies' final TILA appraisal rule, either home only and/or land home MH loans *<u>are not</u>* excluded from the definition of "higher-risk mortgage loan," then Vanderbilt has two additional comments for the Agencies' consideration.

The proposed "additional appraisal" will be required in situations that might constitute a "flipping" scam. (77 FR at 54737.) Flipping situations are identified in part by comparing "the price at which the seller acquired the property" to the consumer's purchase price. (Proposed §1026.XX(b)(3)(i)(B). 77 FR at 54772.) Proposed comment XX(b)(3)(i)(B)-1 says that "The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property." (77 FR at 54774.) In addition, the Agencies explain in the section-by-section analysis that the term "acquisition" will include "property previously acquired by the seller through a non-purchase acquisition, such as inheritance, divorce, or gift." (77 FR at 54737.)

Both of these terms, "price" and "acquisition," are overly broad in the context of MH retailing and lending. Many MH sales, both new and used, are made at the 2,500 or so MH retailer locations that are currently operating in the country. These MH retailers, of course, must first obtain an inventory of MHs to re-sell to consumers. MH retailers have various ways in which they obtain their MH inventory, including:

a. Buying newly manufactured MHs directly from the manufacturer, for re-sale to consumers at retail prices.
b. Taking used MHs in trade from previous owners, the value of which is applied to the down payment for the previous owners' purchases of new MHs (much as auto dealers take used cars in trade when selling new cars). The previous owners typically receive something less than retail value for their trades, and the MH retailers typically re-sell the trades to consumers at retail prices (again, much like auto dealers do).
c. Buying used MHs from lenders after the lenders have recovered the MHs from the previous owners after default. Again, as in the trade scenario, the lenders typically receive considerably less than retail value for these "repo re-sales," and the MH retailers typically re-sell the repo re-sales to consumers at retail prices.

Thus the typical methods by which MH retailers build their inventory are to acquire both new and used MHs at *wholesale* prices, sometimes in non-purchase transactions (such as trade-ins), and to then re-sell the MHs to consumers at higher retail prices. In a nutshell, that's how MH retailers (like auto dealers) make a profit and stay in business. Similarly, when MH lenders sell their repos directly to consumers, rather than to retailers (as described at #4.c above), the MH lenders seek to recover as much as possible against the defaulted account balances. Sometimes the MH lenders may sell their repos for higher prices than they "paid" upon recovery (such as with voluntary surrenders in exchange for releases from the account balances or when MH lenders are the winning bidders at repossession/foreclosure sales).

As currently written, the TILA appraisal rule could conceivably include the wholesale prices that MH retailers and lenders pay, whether in money or in trade or in release, within the meaning of the phrase "the price at which the seller acquired the property." Presumably the Agencies did not mean for MH

lenders to make such apples-to-oranges comparisons between wholesale acquisition prices and consumer's retail purchase prices. The TILA appraisal rule should be clarified accordingly. Otherwise MH retailers and lenders will likely have to delay their MH re-sales more than 180 days in order to avoid the "additional appraisal" requirement, which delays will likely damage both the public interest and the safety and soundness of creditors by reducing the public's access to readily available affordable housing and also by reducing the recovery rates of MH lenders.

5. Creditors should not be required to absorb the costs of any "additional appraisals" or of the copies of any appraisals that are required to be provided under the TILA appraisal rule. (Replying to Question 33.)

Consistent with new TILA sections 129H(b)(2)(B) and 129H(c), the TILA appraisal rule provides that creditors cannot charge consumers for any "additional appraisals" or for the copies of any appraisals that are required to be provided. (Proposed §§1026.XX(b)(3)(v) & 1026.XX(d)(4). 77 FR at 54773.) These new statutory and proposed rule sections just now cited speak in terms of creditors not being allowed to "charge" consumers for additional appraisals or for copies of appraisals. Unfortunately, the Agencies' proposed comments to these sections impermissibly go beyond the language of the new statute and proposed rule. Proposed comments XX(b)(3)(v)-1 and XX(d)(4)-1, both titled "Fees and mark-ups," first reiterate the prohibitions against charging consumers by imposing fees, but then they both go on to say that these prohibitions also preclude creditors from recovering their costs "by marking up the interest rate or any other fees payable by the consumer in connection with the higher-risk mortgage loan."

The additional prohibitions in these two comments are not supported by either the statutory or regulatory language that they purport to explain. Instead, these prohibitions against mark-ups represent the Agencies' independent policy judgments about how creditors should conduct their business. The Agencies have no legal authority to make such judgments. Nor is there any rational basis for imposing these prohibitions against recovering basic transaction costs, other than cost shifting in an effort to subsidize credit availability for consumers. The creditors' costs for additional appraisals and for copies of appraisals are real costs, and any mark-ups of rates or originations charges will solely be for the purpose of recovering these costs of doing business. If mark-ups to recover costs are not allowed, then the practical result will not be to protect consumers. Instead, to the contrary, the result will be to reduce credit availability for consumers, because creditors simply won't make any loans that "look like" they might possibly involve "flipping" situations, even if in fact there is nothing fraudulent about the transactions. Alternatively, creditors will simply raise their rates or other fees across the board, for all loans, so as to create a sufficient margin to absorb these costs. Neither result will serve consumers.

Thank you for your consideration of Vanderbilt's comments. Please feel free to call me at 865-380-3000 (extension 2603) if you would like to discuss any aspects of our comments.

Sincerely yours,

Paul Nichols
President