United States Senate

WASHINGTON, DC 20510

April 16, 2020

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton,

We are writing to you, as the head of the public agency that Congress has tasked with protecting investors, and maintaining fair, efficient and orderly public markets, to express our concern that the Securities and Exchange Commission's (SEC) existing interpretation of the current expected credit losses (CECL) accounting methodology relief provided in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), coupled with other actions by your fellow federal financial regulators, has resulted in an environment ripe for investor confusion. We believe this necessitates you applying and enforcing the equal implementation of time frames on accounting standards and capital treatments across all financial institutions and their parent companies, whether regulated at the State or Federal level. While we understand that this is an extraordinary action, it is not an unprecedented one, and we have come to this conclusion based on an extraordinary set of circumstances.

First, among the various efforts to combat the serious consequences of the COVID-19 pandemic, the CARES Act provided some relief to depository institutions so they can focus on what they do best, lending and serving borrowers during this crisis period. Specifically, Section 4014 of the CARES Act provides for an optional deferral from implementation of the CECL accounting standard until the date in which the national emergency terminates or December 31, 2020. This was designed to both relieve banks from the operational complexity of compliance and to mitigate the potential adverse impacts on capital of the procyclical standard relative to the incurred loss accounting that CECL replaces. We urge you, at a minimum, to extend this relief to all financial institutions, both depository and non-depository, in order to ensure a level playing field. All financial institutions stand ready to lend and serve borrowers in the wake of COVID-19, and the delay in CECL for all will assist in allowing these institutions to focus on economic relief.

Second, we believe it is the clear intent of Section 4104 of the CARES Act to provide operational and capital relief to banks, which is why the FDIC, the OCC and the Federal Reserve issued a joint statement on March 31st, 2020 on the interaction of the statutory relief and the regulators' interim final rule (IFR). The IFR not only delayed banks from having to adopt CECL in 2020, but also exempted those banks that choose to comply with CECL in 2020 from having to set aside the capital that would be required under the standard for an additional year, coupled with a three year phased-in transition period. These regulatory actions, while necessary, created

an unfortunate by-product, an uneven framework for investors to appropriately assess the ability of non-bank lenders and financial services companies vis-à-vis their bank peers.

Like banks, many of the publicly traded non-bank financial companies under the purview of the SEC offer a wide range of services, including small business lending, consumer and personal loans, credit cards, residential, automotive and commercial lending among others. Forcing these lenders to set aside capital in order to comply with CECL will limit consumer and small business access to credit during a time of extreme economic uncertainty and need. Which is why we believe you would be within your right to ensure that there is uniformity in the application of CECL and its attendant capital requirements for both banks and non-bank companies.

Further, we appreciate the April 3, 2020 statement issued by SEC Chief Accountant Sagar Teotia indicating that for those entities that are eligible to apply the provision of the CARES Act related to the deferral of CECL, an election to apply that provision would be in accordance with GAAP. However, we understand that interpretations of Section 4014 that the SEC staff has expressed to major auditing firms and registrants has undermined the intent of the CARES Act and does not adequately address the law's interaction with the IFR.

Specifically, Section 4014 provides the option of temporary relief from the CECL standard until the date in which national emergency terminates or December 31, 2020. However, auditing firms and registrants now believe your position is that:

- CECL must be adopted on the day the relief expires, rather than the day after. Therefore if the relief extends until December 31, 2020 then banks must adopt CECL on that very day (and not, as one would think, on January 1, 2021), meaning within the 2020 fiscal year for calendar year-end filers;
- The bank's application of CECL should be retrospective to the beginning of the fiscal year of adoption (which would be January 1, 2020) and prior reported earnings must be re-stated to reflect the adoption of CECL to January 1, 2020;
- Banks do not have the ability to adopt CECL in any period other than the day the relief expires (no early adoption);
- Banks that elect to temporarily delay the standard must do so before filing its first quarter financial statements, which are due soon;
- If a bank elects to temporarily delay the standard, quarterly filings in 2021 must re-state quarterly 2020 filings in Form 10Q for comparability purposes; and
- A bank would not have the ability to elect to defer CECL and then subsequently elect to adopt CECL before the date the deferral expires under the CARES Act.

Each of these specific interpretations appears to contradict the intent of the CARES Act, as they require decisions to be made immediately and two sets of books to be maintained throughout all of 2020. Furthermore, they could require a bank to forego aspects of the regulatory capital relief provided by the Federal banking agencies due, in part, to the significant administrative burden required in the retroactive application and adjustments to future interim reports for comparability.

Once the operational demands of the pandemic are better understood, any bank or non-bank should be able to elect CECL adoption any time during this fiscal year after this first quarter. More importantly, we urge you to interpret the December 31, 2020 termination date of the delay to require CECL implementation no later than January 1, 2021. We also recommend that the SEC, in the event the "emergency period" ends prior to the end of 2020, clarify how a mid-year adoption of accounting standards can work during this crisis period and clarify that restatement of prior financial information under the incurred loss model is not required. Such a clarification should allow for sufficient time to ramp up financial reporting efforts and not require companies to restate past quarter financial statements, thus minimizing the administrative burden on entities who chose to temporarily delay the adoption of CECL.

The concern that Congress has exhibited over the past year related to CECL implementation, including formal hearings and a required study of the economic impact, should make clear the intent of Section 4014 in the CARES Act as well as the importance of the subsequent regulatory actions. We, therefore – especially considering this exceptional time our country is experiencing – urge you to provide uniformity in the implementation of time frames on accounting standards and capital treatment across all financial institutions and their parent companies.

Sincerely,

Jerry Moran
United States Senator

Thom Tillis
United States Senator