MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

April 1, 2020

Via Electronic Submission: rule-comments@sec.gov

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, Release no. BHCA-8; File no. S7-02-20

Dear Ms. Countryman:

Managed Funds Association[1] ("MFA") appreciates the opportunity to provide comments in response to the proposed amendments to the rules implementing Section 13 of the Bank Holding Company Act (the "Volcker Rule"), which imposes restrictions on the ability of a banking entity or nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.[2] MFA supports the efforts of the Securities and Exchange Commission (the "SEC"), along with the other regulators[3] responsible for the Proposal, to amend and update the Volcker Rule. In particular, MFA supports the Agencies' proposed definition of "ownership interest" for purposes of the Volcker Rule as well as the proposed amendments to the types of assets that loan securitization vehicles are permitted to hold under the Rule. We believe the proposed changes will better tailor the scope of the Volcker Rule with respect to loan securitizations, consistent with Congressional intent. As the Financial Stability Oversight Council noted in its 2011 study on the statutory provisions underlying the Volcker Rule, the statute was not intended to infringe on loan securitizations because "[t]he creation

1 The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

2 85 F.R. 1210 (Jan. 15, 2020).

3 The proposed amendments to the Volcker Rule (the "Proposal") is a joint rulemaking of the SEC, the Office of the Comptroller of the Currency, Treasury Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Commodity Futures Trading Commission (together, the "Agencies").

and securitization of loans is a basic and critical mechanism for capital formation and distribution of risk in the banking system."[4]

As the Agencies note in the Proposal, Section 13(a)(1)(B) of the Bank Holding Company Act (the "BHA") and the Volcker Rule prohibit banks from acquiring or retaining an equity, partnership, or other ownership interest in a covered fund. We believe it is important for the Agencies to tailor the definition of an ownership interest in the rule to appropriately distinguish debt instruments from equity instruments for purposes of the Volcker Rule. In that regard, we agree with the proposed change to §__.10 (d)(6)(A) of the Volcker Rule that a creditor's right "upon the occurrence of an event of default or an acceleration event can include the right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal" should not be treated as similar to an equity interest. These rights are fully consistent with a creditor's interest in an issuer and should not be deemed to convert a debt interest into an equity interest under the Volcker Rule. We also agree with the discussion in the Proposal that treating such debt interests as ownership interests under the Volcker Rule has unnecessarily impeded bank investments in debt issuances by securitization vehicles. Accordingly, we support the proposed amendment to the definition of "ownership interest" in §__.10(d)(6)(A) and encourage the Agencies to adopt the proposed change.

We also support the proposed amendments to §__.10(c)(8), which excludes loan securitizations from the definition of a "covered fund" for purposes of the Volcker Rule. Specifically, we agree with the Agencies that permitting loan securitization vehicles to hold a *de minimis* amount of non-loan assets is consistent with the loan securitization exclusion and the policy goal set out in Section 13(g)(2) of the BHA, which provides that "[n]othing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law." We also agree with the Agencies that permitting a loan securitization vehicle to hold a small amount of non-loan assets would permit asset managers to better manage their loan securitization vehicles to respond to changing market dynamics, consistent with the expectations of many investors in traditional securitization products.

Proposed §__.10(c)(8)(i)(E) accomplishes this goal, by providing that an issuer may still qualify as a loan securitization if it holds no more than five percent of the aggregate value of its assets in assets that are not specifically permitted under the other provisions of §__.10(c)(8). The Agencies request comment on whether five percent or some other maximum percentage, such as ten percent, should be permitted under §__.10(c)(8)(i)(E). For the reasons discussed above, we believe that permitting up to ten percent of a loan securitizations assets to be non-loan assets would be consistent with the policy objectives set out in Section 13(g)(2) of the BHA and provide appropriate flexibility to managers of loan securitization vehicles. At a minimum, however, we believe it is important for the Agencies to permit a loan securitization to hold at least five percent of its assets in non-loan assets.

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4 *See*, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds, (Jan. 18, 2011), at 47, available at: http://www.treasury.gov/initiatives/Documents/Volcker%20sec%20%20619%20study%20final%201%2018%2011%20rg.pdf.

The Agencies also request comment on whether the rule should limit the types of non-loan assets that a loan securitization may hold under proposed §__.10(c)(8)(i)(E). Given the limitation on the amount of non-loan assets a loan securitization vehicle may own, we do not believe it is necessary to specify the types of permissible non-loan assets. Providing managers with flexibility within the limited amount of non-loan assets the loan securitization may hold will better enable managers to respond to investor expectations and market dynamics that change over time and also will minimize administrative and operations costs associated with complying with the rule. Accordingly, we encourage the Agencies not to specify the types of assets permitted under §__.10(c)(8)(i)(E), as proposed.

We appreciate the opportunity to provide these comments on the Proposal. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Mark D. Epley

Mark D. Epley
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/s/ Benjamin Allensworth

Benjamin Allensworth
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