IAA INVESTMENT ADVISER ASSOCIATION

October 16, 2018

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Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC–2018–0010

Securities and Exchange Commission
Brent J. Fields, Secretary
100 F Street, NE
Washington, DC 20549-1090
File No. S7–14–18

Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R–1608; RIN 7100–AF 06

Commodity Futures Trading Commission
Christopher Kirkpatrick, Secretary
1155 21st Street, NW
Washington, DC 20581
RIN: 3038–AE72

Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
550 17th Street, NW
Washington, DC 20429
RIN: 3064–AE67

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

The Investment Adviser Association[1] (**IAA**) appreciates the opportunity to comment on the five Volcker Agencies'[2] request for public comment[3] on proposed amendments to the final

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[1] The IAA is a not-for-profit association dedicated to advancing the interests of investment adviser firms registered with the Securities and Exchange Commission (**SEC**). The IAA's more than 650 member firms manage more than $20 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit our website: www.investmentadviser.org.

[2] The Volcker Agencies are the Office of the Comptroller of the Currency (**OCC**), the Board of Governors of the Federal Reserve System (**Board**), the Federal Deposit Insurance Corporation, the SEC, and the Commodity Futures Trading Commission.

rule implementing the Volcker Rule Statute[4] to provide banking entities with clarity about which activities are prohibited and to improve supervision and implementation of the Statute.

The IAA submitted a comment letter on September 21, 2017[5] in response to a request for comment by the OCC on how to revise the Volcker Rule Regulations to better accomplish the purposes of the Statute. The IAA's 2017 comment letter focused on and made recommendations with respect to four specific issues that directly affect asset managers. We also expressed support for the comments of the Securities Industry and Financial Markets Association (**SIFMA**) as they relate to asset management, including their comments on the breadth, complexity, and prescriptive nature of the Volcker Rule Regulations generally, and on the definitions of trading account and covered funds more specifically.

We appreciate the Agencies' consideration of our and other stakeholders' earlier comments and their efforts to revise the Volcker Rule Regulations to align them more closely with the purposes of the Volcker Rule Statute. We make the following recommendations in response to the Request for Comment, which we believe would address concerns of bank-affiliated asset managers arising from implementation of the Volcker Rule Regulations:

- Remove the proposed accounting prong of the trading account definition;
- Exclude all regulated funds[6] from the banking entity definition; and

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[3] *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 83 Fed. Reg. 33,432 (July 17, 2018), available at https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-13502.pdf. Docket ID OCC-2018-0010; Board Docket No. R-1608; RIN 7100-AF 06; FDIC RIN 3064-AE67; SEC File Number S7-14-18; CFTC RIN 3038-AE72 (**Request for Comment**).

[4] Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) (**Statute**); *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, 79 Fed. Reg. 5,536 (Jan. 31, 2014); and *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 79 Fed. Reg. 5,808 (Jan. 31, 2014) (**Volcker Rule Regulations)**.

[5] See Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, to the OCC re: Volcker Rule; Request for Information (Sept. 21, 2017), available at https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/Volcker-Comment-Letter-9-21-17.pdf.

[6] **Regulated funds** refer to U.S. registered investment companies (**RICs**) and foreign public funds (**FPFs**), as defined in § __.10(c)(1) of the Volcker Rule, amended as we recommend in section II.C.1 below.

- With respect to the definitions under the covered funds provisions, (1) clarify and simplify the definition of FPF; (2) if regulated funds are not fully excluded from the banking entity definition, (a) confirm prior Agency guidance for seeding of regulated funds, (b) similarly confirm prior Agency guidance for control of FPFs, and (c) address life-cycle events; (3) confirm the Agencies' earlier Policy Statement regarding qualified foreign excluded funds (**QFEFs**); (4) apply the exemptions from "covered transactions" to Super 23A; (5) create an exclusion for family wealth management vehicles; (6) expand the loan securitization exclusion from the covered fund definition; and (7) modify the definition of ownership interest to exclude interests in debt securities.[7]

I. Summary

Congress enacted the Volcker Rule to restrict banks from risking their own capital in short-term trading and to prevent banks from engaging indirectly in short-term trading through a hedge fund or private equity fund. Congress did not intend the Volcker Rule to interfere with ordinary course management of regulated funds, impair traditional client-facing asset management or advisory services, including the funding of incubators to test new client products, services, or strategies, or extend into foreign asset management activities with little or no nexus with the United States.

But the final rule implementing the Statute has had these unfortunate effects. And these effects have caused our bank-affiliated asset manager members to be at a significant competitive disadvantage as compared with non-bank-affiliated asset managers. They have been limited in their ability to seed incubators using their own funds, either because those activities have fallen into a "trading account" and no exemption from prohibited proprietary trading has been available, or because the seeding period for regulated funds has been unworkably short. They have also had to expend substantial resources to determine whether their activities are subject to the Volcker Rule Regulations and, because of the costs and complexity of the analysis, have either refrained from engaging in certain ordinary course activities the Volcker Rule was not meant to impair or faced additional compliance costs.

We are grateful to the Agencies for relief they have granted to our members through frequently asked questions (**FAQs**) and their thoughtful reconsideration of the Volcker Rule Regulations, especially as they relate to asset management. We ask the Agencies to formalize

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[7] The IAA generally supports the comment letters submitted in response to the Request for Comment by the Investment Company Institute (**ICI)**, SIFMA, the Bank Policy Institute (**BPI**), the American Bankers Association (**ABA**), and the Loan Syndications and Trading Association (**LSTA**) with respect to their comments on the issues we address in this letter.

that relief and also address additional unintended consequences of the Volcker Rule Regulations on bank-affiliated asset managers. Specifically, we recommend that the Agencies:

A. Proprietary Trading

1. ***Remove the proposed accounting prong of the trading account definition.*** We are concerned that the proposed accounting prong is not an appropriate test for the trading account. For example, it could potentially sweep in advisers' use of seed capital to develop products, services, or strategies for asset management clients, including to seed a regulated fund, as well as the hedging of seed capital positions in regulated funds.

B. Definition of Banking Entity

1. ***Exclude all regulated funds from the banking entity definition.*** Regulated funds sponsored by bank-affiliated asset managers, whether organized and registered in the United States or in foreign jurisdictions, do not raise the types of short-term and speculative trading concerns the Volcker Rule is intended to address. Bank-affiliated asset manager sponsors of these regulated funds should not have to conduct the ongoing complex analyses to determine whether they are controlled by and potentially fall within the definition of a "banking entity."

C. Exclusions from the Definition of Covered Funds

1. ***Clarify and simplify the definition of foreign public fund.*** The exclusion from the definition of covered fund for FPFs should be modified to exclude regulated foreign funds more clearly and prevent arbitrary classifications based on differences in foreign regulation.

2. ***Confirm the treatment of regulated funds if they are not fully excluded from the banking entity definition.*** To the extent that regulated funds are not entirely excluded from the banking entity definition, the Agencies should:

    a) ***Confirm FAQ 16***[8] in the preamble to any amended Volcker Rule Regulations to make clear that a three-year seeding period for a bank-affiliated asset manager to establish a regulated fund is not the maximum period permitted for

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[8] See Volcker Rule Implementation Frequently Asked Questions, Question No. 16, *Seeding Period Treatment for Registered Investment Companies and Foreign Public Funds*, available at https://www.occ.treas.gov/topics/capital-markets/financial-markets/trading-volckerrule/volcker-rule-implementation-faqs.html.

launching a fund on a platform and promoting it to investors.

b) ***Confirm FAQ 14***[9] to provide certainty that FPFs will not be deemed to be affiliates of a banking entity as long as the banking entity does not own or control 25 percent or more of the fund (after the seeding period) and the banking entity provides investment advisory services to the fund in compliance with applicable requirements in the relevant foreign jurisdiction. The Agencies should also expressly confirm that an FPF will not be deemed a banking entity solely by virtue of its relationship with the sponsoring banking entity, where these same conditions are met.

c) ***Address life-cycle events for regulated funds*** by (i) allowing sponsoring bank-affiliated asset managers to exceed a 25 percent ownership in these funds during or in anticipation of certain types of mid-life or end-of-life events, and (ii) permitting an asset manager to make additional seed investments in a regulated fund under certain limited circumstances.

3. ***Confirm the treatment of qualifying foreign excluded funds*** by incorporating the July 21, 2017 Policy Statement into the preamble to any amended Volcker Rule Regulations.[10] This will remove uncertainty and confirm that the activities and investments of a QFEF will not be attributed to a foreign banking entity, and that the QFEF will not itself be treated as a banking entity under the Volcker Rule, provided that the foreign banking entity's investment in or sponsorship of the QFEF complies with the "solely outside of the United States" (**SOTUS**) exemption from covered fund restrictions.

4. ***Modify the scope of Super 23A covered transactions.*** The Agencies should revise the definition of covered transaction for purposes of the Super 23A provisions of the Volcker Rule Regulations to incorporate the exemptions under section 23A of the Federal Reserve Act and Regulation W thereunder.

5. ***Create an exclusion for family wealth management vehicles from the covered fund definition***, as recommended in the SIFMA, BPI, and ABA letters.

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[9] See Volcker Rule Implementation Frequently Asked Questions, Question No. 14, *Foreign Public Funds Sponsored by Banking Entities*, available at https://www.occ.treas.gov/topics/capital-markets/financial-markets/trading-volckerrule/volcker-rule-implementation-faqs.html.

[10] See Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017), available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170721a1.pdf.

6. ***Expand the exclusion for loan securitizations*** from the covered fund definition to exclude all traditional collateralized loan obligations (**CLOs**), as recommended in the LSTA letter.

7. ***Modify the definition of ownership interest*** to protect important creditor rights of CLO debt holders, as recommended in the LSTA letter.

We discuss each of these below.

II. Discussion

A. Proprietary Trading

1. The overly broad proposed accounting prong of the trading account definition does not appropriately reflect the statutory language and would sweep in instruments that do not currently come within the short-term trading prong.

The Volcker Rule defines "proprietary trading" as engaging as principal for the "trading account" of the banking entity. "Trading account" is defined as acquiring or taking positions in financial instruments principally for purposes of short-term resale.[11] The Volcker Rule Regulations define "trading account" to include three prongs, including a "short-term intent prong." The proposed rule would replace the short-term intent prong and its associated rebuttable presumption with an accounting prong. Any financial instrument that is recorded at fair value on a recurring basis under U.S. generally accepted accounting principles would be covered under this prong and would generally include derivatives, trading securities, and available-for-sale securities, regardless of how long those instruments are held or the purpose for which they are purchased or sold.

While we support the Agencies' efforts to simplify the short-term intent prong and eliminate the unworkable rebuttable presumption, we are concerned that the overly broad proposed accounting test, which has no temporal or purpose component, is not the right test and is not consistent with the Volcker Rule Statute's focus on short-term trading. It will capture many types of instruments that are not entered into for short-term trading purposes solely because they are recorded at fair value.

For example, the accounting prong will sweep in an asset manager's use of seed capital, hedging of seed positions, and co-investments that are not currently subject to the proprietary trading prohibition.

[11] 12 U.S.C. §§ 1851(h)(4) and (6).

Investments by an asset manager to seed a RIC or FPF are required to be held at fair value under investment company accounting rules, as are certain hedges of the regulated fund seed capital. In addition, co-investments in covered funds are held at fair market value. These investments would therefore also be swept into the definition of trading account under the proposed accounting prong.

Asset managers and advisers also routinely invest their own money in a seed account in the ordinary course to develop and test new products, services, and strategies before deploying them on behalf of investors. The seed account is typically used as an incubator, *i.e.*, to work through a product, service, or strategy, test its viability, develop a performance track record, and ascertain its suitability for different types of investors under different market conditions. Most financial instruments that are purchased or sold in this seed account would be recorded at fair value on a recurring basis and would thus trigger the trading account definition, as would hedging their exposure. This would be the case even when they are held for substantially longer than 60 days and, as described in our 2017 comment letter, the seed account is not used to generate short-term profits.

As these examples demonstrate, the accounting prong, although simpler, would sweep with a much broader brush and capture activities that are clearly not within the intent of the Volcker Rule. We therefore ask that the accounting prong be removed from the definition of trading account and that the short-term intent prong be retained, with the modifications recommended by SIFMA, BPI, and the ABA.

If the Agencies nevertheless keep the accounting prong, we ask that the accounting prong – or any other trading account test the Agencies may adopt – expressly exclude investments made by bank-affiliated advisers – and hedging of those investments – either (i) to test investment products, services, or strategies before deploying them for the benefit of clients, or (ii) to seed or invest in a new regulated fund, as well as co-investments.

B. Definition of Banking Entity

1. <u>Regulated funds should be categorically excluded from the definition of banking entity.</u>

Regulated funds sponsored by bank-affiliated asset managers, whether organized and registered in the United States or in foreign jurisdictions, do not raise the types of short-term and speculative trading concerns the Volcker Rule was intended to address and should be expressly excluded from the definition of banking entity. Indeed, FPFs should not have to face the possibility that they could become subject to the Volcker Rule's trading and investment restrictions, in light of Congress's intent to limit the Volcker Rule's extraterritorial reach. The Agencies should treat RICs and FPFs the same for Volcker Rule purposes and exclude both from the definition of banking entity under the Volcker Rule Regulations.

As discussed in our 2017 comment letter, Congress never intended that RICs or FPFs be covered by the Volcker Rule. In fact, the Agencies recognize that the Statute reflects an intention not to disrupt registered investment companies, and also intended to limit its extraterritorial reach with respect to FPFs.[12] Indeed, there has been no suggestion either before or since enactment of the Volcker Rule that such funds raise any of the concerns the Statute was intended to address.

Nevertheless, regulated funds are considered banking entities and subject to the full panoply of prohibitions under the Volcker Rule Regulations if they are controlled by a banking entity. Thus, if a banking entity owns, controls, or has the power to vote 25 percent or more of the RIC's voting shares, or 15 percent for an FPF sponsored by a U.S. banking entity, the regulated fund will itself become a banking entity. It will then be unable to fulfill its investment strategy of buying and selling securities in a professionally managed, pooled investment vehicle that is already highly regulated and otherwise serves as an important financial tool for retail investors that do not have enough assets to diversify on their own or cannot gain the economies of scale in management and pricing that are offered with a regulated fund.

The Volcker Rule Regulations provided some relief for RICs and certain funds sponsored by bank-affiliated asset managers and organized and regulated outside of the United States. The Agencies extended that relief through subsequent guidance in response to frequently asked questions (FAQ 16 and FAQ 14), as discussed more fully below. We appreciate that this relief was confirmed in the preamble to the proposed amendments. However, even if this relief is reconfirmed in the final Volcker Rule, it is needlessly complex and we would prefer a more streamlined approach. We thus request that RICs and FPFs be excluded from the definition of banking entity altogether in order to provide certainty under the rule, assure banking entities that they can continue to launch and seed regulated funds without fear that those funds will become banking entities, and increase the utility of the FPF exclusion from the definition of covered fund, all of which would more closely follow Congressional intent.

C. Exclusions from the Definition of Covered Funds

1. The exclusion from the covered fund definition for foreign public funds should be clarified and simplified.

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[12] See Volcker FAQ No. 14, *How does the final rule apply to a foreign public fund sponsored by a banking entity?*, available at https://www.occ.treas.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-ruleimplementation-faqs.html. See also Treasury's Asset Management and Insurance report (October 2017), available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.

Irrespective of whether the Agencies exclude FPFs from the banking entity definition, they should simplify the definition of FPF. The preamble to the Volcker Rule Regulations noted that the exclusion from the definition of covered fund for FPFs was "designed to prevent . . . the definition of covered fund from including foreign funds that are similar to U.S. registered investment companies."[13] However, as noted above, the exclusion is unnecessarily narrow and contains complex restrictions that require banking entities to engage in extensive analysis to determine whether non-U.S. funds qualify for the FPF exclusion. For example, the requirement that the FPF sell ownership interests "predominantly" through one or more public offerings outside the United States is unworkable because a banking entity may not be able to verify that a fund meets this condition. A banking entity also may not be able to confirm that an FPF that is traded on an exchange or distributed through a wide network of intermediaries meets the test for having 85 percent or more of its interests sold to investors that are not U.S. residents. In addition, the exclusion requires that the FPF be authorized to offer and sell ownership interests to retail investors in its home jurisdiction. Many FPFs are organized in one jurisdiction but are only authorized to sell their interests to retail investors in other jurisdictions. These funds have not been able to rely on the FPF exclusion.

These restrictions do not apply to the exclusion from the covered fund definition for RICs and should be eliminated for FPFs to give effect to the intent that FPFs be treated the same as similar U.S. funds. We also ask that the exclusion be streamlined to make it easier to analyze whether a fund qualifies for it. We thus recommend that the exclusion for FPFs in § __.10(c)(1) of the Volcker Rule Regulations be modified to cover any fund that is organized or established outside of the United States and that is authorized to offer and sell its interests to non-U.S. retail investors in one or more jurisdictions that subject the issuer to disclosure and retail investor protection regulation.

2. <u>The treatment of regulated funds should be clarified if they are not fully excluded from the banking entity definition.</u>

As discussed above, we believe that excluding all regulated funds from the definition of banking entity would be the most straightforward way to ensure that RICs and FPFs are not swept into the Volcker Rule Regulations' investment and ownership restrictions. However, to the extent that the Agencies decide to continue to treat regulated funds as potential banking entities, we support the Agencies' confirmation in the preamble to any final amended rule of the relief granted in FAQ 16 and FAQ 14, and also ask that the Agencies clarify circumstances in which bank-affiliated asset managers would have flexibility to deal with certain life-cycle events.

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[13] 79 Fed. Reg. 5535, 5673.

a) *The Agencies should confirm FAQ 16 to make clear that a seeding period for a regulated fund may exceed three years.*

The Agencies issued guidance in 2015 that regulated funds should not be treated as banking entities during the period in which the bank-affiliated asset manager is testing the fund's investment strategy, establishing a track record of the fund's performance for marketing purposes, and attempting to distribute the fund's shares, *i.e.*, the seeding period. The Agencies recognize that the seeding period for a regulated fund may take some time. Because it is not uncommon for the seeding period to last for three or more years, Agency staff issued FAQ 16 to clarify that they would not consider a regulated fund to have become a banking entity if a seeding period lasts "for example" for three years.

We appreciate the Agencies' confirmation of this guidance in the preamble to the proposed amendments.[14] We request that the guidance be formalized by expressly stating in the preamble to any final amended rule that the seeding period for a regulated fund may last for more than three years.

b) *The Agencies should also confirm FAQ 14 to provide clarity regarding control of a foreign public fund.*

Agency staff also addressed how the Volcker Rule Regulations apply to FPFs sponsored by a banking entity in FAQ 14. We respectfully ask that the Agencies formalize this guidance as well. This would provide certainty that FPFs will not be deemed to be affiliates of a banking entity as long as the banking entity does not own or control 25 percent or more of the FPF after the seeding period and subject to taking into account life-cycle events, discussed below. As provided in FAQ 14, the banking entity would also need to provide investment advisory services to the fund in compliance with applicable requirements in the relevant foreign jurisdiction. The Agencies should also formally confirm that an FPF will not be deemed a banking entity solely by virtue of its relationship with the sponsoring banking entity where these same conditions are met.

c) *The Agencies should address life-cycle events for regulated funds by allowing bank-affiliated asset managers to exceed 25 percent ownership temporarily during or in*

[14] "The staffs stated their understanding that the seeding period for an entity that is a RIC or FPF may take some time. Recognizing that the length of a seeding period can vary, the staffs provided an example of three years, the maximum period of time expressly permitted for seeding a covered fund under the Volcker Rule Regulations, without setting any maximum prescribed period for a RIC or FPF seeding period. Accordingly, the staffs stated that they would neither advise the Agencies to treat a RIC or FPF as a banking entity solely on the basis of the level of ownership of the RIC or FPF by a banking entity during a seeding period, nor expect that a banking entity would submit an application to the Board to determine the length of the seeding period." 83 Fed. Reg. 33,432, 33,443.

> *anticipation of certain events and as a result of certain limited types of event-driven mid-life re-seeding scenarios.*

The risk of a regulated fund becoming a banking entity under the Volcker Rule exists even after the seeding period. A banking entity could end up owning more than 25 percent of a regulated fund even if it was below that threshold at the end of the seeding period for a variety of reasons, all of which are common in the life cycle of a regulated fund and all of which are benign. For example, asset managers routinely close or reorganize regulated funds. As part of the liquidation or reorganization, it may be necessary for the asset manager temporarily to retain or even acquire more shares to allow for an orderly liquidation or reorganization for investors. The asset manager's percentage ownership will increase as the interests of third-party investors decrease. Asset managers also may end up holding a greater share of interests in a fund after a significant redemption or where there is an inability to attract sufficient investors to the fund, even after the seeding period.

In addition, it is not uncommon in the investment management industry for an asset manager to add to assets under management for a regulated fund after the seeding period. Generally, this is done where there may be a large investor redemption that could disqualify the fund for continued sales on a distribution or trading platform, thereby reducing the opportunity for replacing those redeemed assets. This can drive up the expense ratio of the fund and result in a further departure of assets, or it could reduce the number of investors resulting in fund concentration that disqualifies the fund for continued sales on a distribution or trading platform or causes the fund to fail to meet the size thresholds for investment by certain institutional investors. In those cases, the fund management generally will analyze the costs involved in winding down and dissolving a fund due to a temporary asset drop versus the value of adding to the fund assets to keep the fund eligible for continued investment by institutional investors or continued marketing on a trading platform. These types of investments should involve a business analysis and weighing of various factors to determine if the temporary addition of seed investments from the fund's sponsor is likely to be more profitable in the long run versus closing down the fund. Therefore, we believe allowing bank-affiliated asset managers the flexibility to contribute additional seed investments to its sponsored regulated funds should be permitted as long as the sponsor has evaluated the economics and determined it is the most appropriate course for the fund, its investors, and the manager to do so, and periodically (at least annually) revisits whether to retain or redeem those additional investments.

If RICs and FPFs are not fully carved out of the definition of banking entity, in the alternative the Agencies should recognize and address the common fund life-cycle events specified above and make clear in any final amended rule that they will not cause a regulated fund to become a banking entity under the Volcker Rule.[15]

3. <u>The Policy Statement on the treatment of qualifying foreign excluded funds should be confirmed in the preamble.</u>

In order to limit the extraterritorial application of the Volcker Rule, the Volcker Rule Regulations include an exclusion from the definition of covered funds for QFEFs. Thus, a covered fund generally does not include a fund organized or established outside the United States. However, if a foreign banking organization's (**FBO's**) sponsorship of or investment in a foreign fund constitutes control under the Bank Holding Company Act, then the fund would be considered a subsidiary of the FBO and itself be a banking entity. Control could arise where the FBO owns 25 percent or more of the fund or where it selects a majority of the fund's board or acts as general partner or trustee of the fund. Given the complexity and variability of foreign regulations relating to control, many foreign funds are either deemed to be controlled by an FBO or are uncertain as to their status.

We appreciate that the Agencies recognized these concerns and responded by issuing a Policy Statement on July 21, 2017 confirming that the activities and investments of a QFEF will not be attributed to an FBO, and that the QFEF will not itself be treated as a banking entity, provided that the FBO's investment in or sponsorship of the QFEF complies with the SOTUS exemption from covered fund restrictions. We respectfully request that the Agencies confirm the Policy Statement in any final amended rule.

4. <u>The Agencies should incorporate the exemptions under Section 23A of the Federal Reserve Act and Regulation W thereunder into § __.14 of the Volcker Rule Regulations.</u>

Section __.14 of the Volcker Rule Regulations – the so-called "Super 23A" provisions – broadly prohibit banking entities that advise, manage, or sponsor a covered fund, and all of the banking entities' affiliates, from entering into a "covered transaction" with that fund or with any other covered fund that is controlled by that fund. Covered transactions, as defined in Section 23A of the Federal Reserve Act, include extensions of credit to or acceptance of collateral from the covered fund, purchases of assets from or investments in the fund, derivatives or repurchase transactions with the fund, guarantees for the benefit of the fund, and any credit exposure to the fund.

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[15] We also support the ICI's comments as they relate to common life-cycle activities of regulated funds.

Although the Super 23A provisions incorporate the definition of covered transaction, they do not incorporate the exclusions and exemptions available for covered transactions under Section 23A and Regulation W.[16] The Agencies should incorporate these exclusions and exemptions to allow banking entities to engage in ordinary course transactions, such as allowing intraday or overnight credit extensions that routinely occur as part of normal custody and securities settlement and clearing and are a necessary part of ensuring a smooth functioning global trading market. These are normal banking activities that are performed for a variety of investment vehicles and that should be allowed. Because the credit is secured by fund assets, these transactions do not create a risk that the banking entities will "bail out" their related funds.[17]

We also support the incorporation of the Section 23A and Regulation W quantitative limits into Super 23A to further align the Volcker Rule Regulations with the existing bank regulatory framework and provide additional flexibility to bank-affiliated transactions, as discussed more fully in the SIFMA, BPI, and ABA letters.

5. <u>The Agencies should create an exclusion for family wealth management vehicles from the covered fund definition.</u>

We support the comments of SIFMA, BPI, and the ABA as they relate to excluding family wealth management vehicles from the covered fund definition.

6. <u>The exclusion from the covered fund definition for loan securitizations should be expanded to include CLOs.</u>

The Agencies should expand the loan securitization exclusion from the covered fund definition to include a broader range of loan securitizations. In this regard, the IAA supports the comments of the LSTA and asks, specifically, that the loan securitization exclusion be revised to permit CLOs and other loan securitizations to hold up to 10 percent of non-loan assets, including corporate bonds, interests in letters of credit, cash and short-term highly liquid investments (cash equivalents), and derivatives. This modest percentage of non-loan assets would allow loan securitizations to increase diversification and enable their asset managers to be responsive to changing market conditions.

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[16] 12 C.F.R. Part 223 (Subpart E).

[17] *See, e.g.*, 156 Cong. Rec. 5901 (daily ed. July 15, 2010) (statement of Sen. Merkley) ("[T]he intent of [Super 23A]…is to prohibit banking entities from bailing out funds they manage, sponsor, or advise, as well as funds in which those funds invest[.]").

7. <u>The Agencies should modify the definition of ownership interest to exclude interests in debt securities.</u>

The IAA also supports the LSTA's recommendation that the Agencies revise the definition of ownership interest for purposes of the covered fund restrictions in the Volcker Rule Regulations to ensure that debt securities are not treated as ownership interests solely because of the exercise of creditor rights that are designed to protect their debt interests. The LSTA suggests, and we agree, that the most straightforward way to accomplish this change would be to modify the sixth prong of the definition – §__.10(d)(6) of the Volcker Rule Regulations – to provide that the "rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event" 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.

* * *

Conclusion

We commend the Agencies for engaging in this important reconsideration of the Volcker Rule Regulations and we appreciate the opportunity to provide comments on the proposed revisions and Agency questions. Please do not hesitate to contact the undersigned at [redacted] if we can be of further assistance during your review of the Volcker Rule Regulations.

Respectfully,

Gail C. Bernstein
General Counsel

cc: Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System

Joseph M. Otting, Comptroller of the Currency
Office of the Comptroller of the Currency

Honorable Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corporation

Honorable Jay Clayton, Chairman
Securities and Exchange Commission

Honorable J. Christopher Giancarlo, Chairman
Commodity Futures Trading Commission

Honorable Kara M. Stein, Robert J. Jackson Jr., Hester M. Peirce, and Elad L. Roisman, Commissioners, Securities and Exchange Commission

Dalia Blass, Director, Division of Investment Management, Securities and Exchange Commission