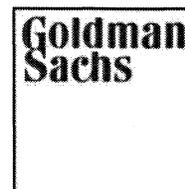


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October 17, 2018

Via Electronic Submission

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

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
File Number S7-14-18

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

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

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
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 Goldman Sachs Group, Inc. ("we" or "the firm") appreciates the opportunity to comment on the notice of proposed rulemaking (the "NPR") issued by the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation (the "FDIC"), the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC" and, together with the OCC, the Federal Reserve, the FDIC and the SEC, the "Agencies") to amend the currently effective regulations implementing the "Volcker Rule" (the "2013 Rule," and such regulations as amended in the manner proposed in the NPR, the "Proposed Rule").¹

¹ 83 Fed. Reg. 33432 (July 17, 2018). Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act codified the Volcker Rule as Section 13 of the Bank Holding Company Act of 1956, as amended (the "BHC Act").

INTRODUCTION

As the NPR acknowledges, the 2013 Rule has been criticized for its complexity, unnecessarily burdensome compliance program requirements and adverse effects on banking entities' ability to facilitate the healthy functioning of financial markets.² We appreciate that the Proposed Rule reflects the Agencies' efforts to improve the 2013 Rule in several areas, including with respect to certain concerns discussed in the Treasury Department's June 2017 report and comment letters responding to the OCC's August 2017 request for input on the Volcker Rule.

However, the Proposed Rule does not contain changes to address many of the most critical concerns created by the 2013 Rule's covered funds provisions, such as the overbroad definition of "covered fund" and the effects that the definition has had on the availability of credit, capital formation and other economic activities beneficial to U.S. economic growth. With respect to the prohibited proprietary trading provisions, aspects of the Proposed Rule, such as the significant increase in the quantitative metrics reporting requirements, have also caused significant concern. Further, the Proposed Rule provides for only a limited degree of streamlining of the 2013 Rule's metrics reporting framework, and additional changes are needed.

We have participated in preparing comment letters on the NPR submitted by the Securities Industry and Financial Markets Association ("SIFMA"), the Financial Services Forum ("FSF"), the American Bankers Association ("ABA"), the International Swaps and Derivatives Association ("ISDA") and the Investment Company Institute ("ICI"), among others (collectively, the "Trade Group Letters"). The Trade Group Letters address several critical issues in detail³ and include recommendations and alternative proposals that we generally support, some of which we have briefly summarized at the end of this letter. We do not otherwise repeat the matters discussed in the Trade Group Letters, but instead focus on specific proposals to improve the covered funds provisions and the metrics reporting framework, which are informed by our practical experience in applying these provisions under the 2013 Rule.

Part I of this letter focuses on certain aspects of the covered funds provisions, including specific negative effects of the 2013 Rule on banking entities' ability to provide credit, support capital formation and meet customer needs. **Parts I.A** and **I.B** below outline two narrowly tailored

² We note, in particular, recommendations made in the U.S. Department of the Treasury's (the "Treasury Department") June 2017 report on the regulation of depository institutions, comment letters responding to the OCC's August 2017 request for input on the Volcker Rule and public statements made by regulators (see, e.g., NPR at 33435 n.19 (quoting statements by Agency principals); Jay Powell, Chairman of the Federal Reserve, *2017 AFA Panel Session: Low Interest Rates and Financial Markets*, American Finance Association Meeting (Jan. 7, 2017) ("What the current law and rule do is effectively force you to look into the mind and heart of every trader on every trade to see what the intent is If that is the test you set yourself, you are going to wind up with tremendous expense and burden and I would say really quite marginal benefit."); Daniel K. Tarullo, Former Vice Chairman for Supervision, Federal Reserve, *Departing Thoughts* (Apr. 5, 2017) ("[S]everal years of experience have convinced me that there is merit in the contention of many firms that, as it has been drafted and implemented, the Volcker [R]ule is too complicated. Achieving compliance under the current approach would consume too many supervisory, as well as bank, resources relative to the implementation and oversight of other prudential standards.")).

³ Among other issues, we note in particular the NPR's proposal to revise the definition of the "trading account" by adopting the so-called "accounting prong." We and others view this proposal as highly problematic, as explained in certain of the Trade Group Letters.

frameworks to amend the covered funds provisions in a manner that would allow banking entities, subject to a number of conditions, to engage in otherwise permissible and properly conducted lending and capital formation activities without being restricted solely on the basis of whether the banking entity conducts the activity directly or indirectly through a fund or other structure that may be deemed a covered fund. Consistent with this, **Part I.C** below includes an additional proposal to permit banking entities to make direct investments alongside covered funds.

Part II of this letter sets forth our proposal for certain streamlining improvements to the quantitative metrics reporting framework. The Proposed Rule includes some helpful changes to the 2013 Rule's metrics reporting requirements, as discussed in **Part II.A** below, which we support. However, we agree with the concerns raised in certain Trade Group Letters that some of the Proposed Rule's other changes to the metrics reporting requirements would significantly increase the costs and inefficiencies of the compliance program without enhancing the Agencies' or banking entities' ability to identify potentially impermissible proprietary trading activity. In **Part II.B** below, we propose that the Agencies further streamline the 2013 Rule's metrics reporting framework consistent with the Agencies' stated intent in the 2013 Rule Preamble.⁴ Specifically, we recommend that the Agencies grant each banking entity the flexibility to agree with its supervisors on, and then calculate and report, the metrics that are most useful in determining whether the banking entity may be engaged in potentially impermissible proprietary trading. This tailored approach to determining the metrics that each banking entity reports would provide the Agencies with quantitative, meaningful insight into the banking entity's risk profile and activities while still simplifying the metrics reporting framework.

I. COVERED FUNDS PROVISIONS

The 2013 Rule implemented the covered funds provisions of the Volcker Rule through a very broad definition of "covered fund." Recognizing that the definition was overbroad, the Agencies provided for multiple exclusions from the definition in the 2013 Rule. Despite those initial attempts to address the negative effects of an overbroad definition, experience since adoption has demonstrated that the definition continues to inhibit unnecessarily the availability of credit, capital formation and other economic activities beneficial to U.S. economic growth without actually advancing the purposes of the Volcker Rule.

We agree with the Agencies and the Treasury Department that the implementation of the Volcker Rule can and should be refined. We respectfully submit that the scope of "covered funds" should harmonize⁵ the Volcker Rule with the other provisions of the BHC Act. This letter's proposed amendments to the covered funds provisions of the 2013 Rule will accomplish this objective in a manner that promotes safety and soundness, supports long-term U.S. investment and growth and is

⁴ See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5535, 5772 & n.2790. (Jan. 31, 2014) ("2013 Rule Preamble").

⁵ We believe an important role of federal regulators is to harmonize statutes in their charge to create a coherent and consistent framework for regulated entities. See, e.g., *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984) ("The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress . . .") (internal citations omitted).

consistent with Congress's expectations that the Agencies ensure that the scope of the definition of covered funds is not "overdone" and does not result in "excessive regulation."^{6, 7}

Congress was clear that the Volcker Rule should not restrict banking entities' ability to extend credit, or arbitrarily limit capital formation activities on the basis of structure rather than function.⁸ Indeed, Section 13(g)(2), which the Financial Stability Oversight Council ("FSOC") referred to as an "inviolable rule," makes clear that "[n]othing in [the Volcker Rule] shall . . . restrict the ability of a banking entity . . . to sell or securitize loans in a manner otherwise permitted by law."⁹ We also agree with Chairman Powell that investing in long-term investment funds is not an activity "that typically threatens safety and soundness," and we believe that such activity can be accommodated in a way that is consistent with the statutory language and intent of the Volcker Rule.¹⁰

A primary issue under the 2013 Rule is that many investments that banking entities are unquestionably permitted to make directly outside of a fund or other legal entity structure become materially restricted by the 2013 Rule when made through a "covered fund" or when made alongside a "covered fund."

Authority to Define the Term "Covered Fund"

As enacted by Congress, the statutory text of the Volcker Rule uses but does not separately define the terms "hedge fund" or "private equity fund" and only defines them by reference to the Investment Company Act of 1940. As an integral part of this broad approach, Congress expressly delegated authority to the Agencies to craft their own definition by rule. The Agencies interpreted this authority broadly. Rather than adopt the statutory language and define "private equity fund" and "hedge fund," the Agencies instead adopted a single "covered fund" definition in the 2013 Rule.

The Agencies rightly concluded in the 2013 Rule that there is no single or clear definition of either of these terms, especially "private equity fund." Even the use of the terms within the statutory

⁶ 156 Cong. Rec. H5226 (daily ed. June 30, 2010) (colloquy between Representative Himes and Representative Frank).

⁷ We respectfully submit that in reconsidering the scope of "covered funds" under the Volcker Rule, the Agencies should take into account banking entities' experience with the 2013 Rule since adoption and the fact that the Volcker Rule is a single component of a broader regulatory framework implemented since the enactment of the Dodd-Frank Act and the adoption of the 2013 Rule. For example, banking entities have generally been required to bolster their capital and liquidity under capital rules such as the liquidity coverage ratio, which only recently became fully effective.

⁸ 156 Cong. Rec. S5905 (daily ed. July 15, 2010) (statement of Sen. Dodd) ("The purpose of the Volcker rule is to eliminate excessive risk-taking activities by banks and their affiliates *while at the same time preserving safe, sound investment activities that serve the public interest.*") (emphasis added).

⁹ See BHC Act § 13(g)(2); FSOC, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds (Jan. 2011) at 47 ("[T]his inviolable rule of construction [BHC Act § 13(g)(2)] ensures that the economically essential activity of loan creation is not infringed upon by the Volcker Rule.").

¹⁰ *Monetary Policy and the State of the Economy: Hearing Before the House Financial Services Committee* (July 18, 2018) (testimony of Federal Reserve Chairman Jay Powell).

text is inconsistent and often unclear. For example, despite Congress's clear intent for venture capital not to be impaired by being captured as "hedge funds" or "private equity funds," Congress, in providing a transition period for illiquid funds, mentions "venture capital investments" among other types of investments associated with a "hedge fund" or "private equity fund."¹¹ To confuse matters further, this section of the Volcker Rule includes a separate definition of "hedge fund" and includes a definition of "private equity fund" by reference to a provision of the Investment Advisers Act (rather than to the Investment Company Act) that does not even use the term "private equity fund." In light of the foregoing unclear and inconsistent statutory language, the Federal Reserve harmonized the Volcker Rule through regulation and defined the terms "hedge fund" and "private equity fund" for purposes of the illiquid funds provision to mirror the definitions provided in the Volcker Rule for such terms.¹²

Faced with an unclear statute and no single clear definition of the statutory terms, the Agencies chose to use their authority to define the scope of "covered funds." In doing so, the Agencies implemented a broad approach to the definition and provided for targeted exclusions for thirteen categories of issuers that are outside of the purposes of the Volcker Rule but that otherwise would have been captured by the breadth of the unified "covered funds" definition. We believe, therefore, that the Agencies have clear authority under Section 13(h)(2) of the BHC Act, which they have previously acknowledged and used, to address the frameworks set forth in **Parts I.A** and **I.B** below either through limited, tailored exclusions from the definition of "covered fund" or a change to the definition of "covered fund" itself. We also believe that the Agencies have clear authority to implement the frameworks under Section __.10(c)(14) of the 2013 Rule and Section 13(d)(1)(J) of the BHC Act.

Because our proposals are limited in scope and narrowly tailored, their adoption would not result in an exception that "swallows the rule" or that contradicts the purpose of the Volcker Rule. Indeed, although we do not repeat SIFMA's analysis in its comment letter regarding the meaning of the term "private equity fund," we fully agree with and endorse its analysis.

Negative Effects of the 2013 Rule's Covered Funds Provisions and Potential Frameworks

The 2013 Rule has restricted many avenues of asset management services, lending activities and capital formation in which banking entities in the United States have traditionally participated. For example, in our experience, many large institutional investors are very focused on, and expect a significant amount of, "skin in the game" from fund sponsors and advisers to ensure incentives are aligned and to act as a built-in mitigant against any potential or perceived conflicts of interest. Under the 2013 Rule, banking entities' ability to invest in vehicles with clients is significantly restricted, even when the vehicles are extending credit or making investments that the banking entities could make directly. In circumstances where we have been unable to meet client expectations for our level of investment, clients have either invested less or, worse, declined to invest at all (each leading to an overall lower amount of capital formation). Potential investors have

¹¹ 12 U.S.C. §1851(h)(7).

¹² 12 C.F.R. § 225.180(b). See also 76 Fed. Reg. 8265, 8267 ("Section 13(h)(7)(B) of the BHC Act provides that, for purposes of the definition of an 'illiquid fund,' the term 'hedge fund' shall not include a 'private equity fund,' as such term is used in [S]ection 203(m) of the Investment Advisers Act of 1940 However, [S]ection 203(m) of the Investment Advisers Act, as added by [S]ection 408 of the Dodd-Frank Act, does not contain a definition of, nor does it use the term, 'private equity fund.' Moreover, as the [Federal Reserve] noted in the proposal, Congress' intent in adopting this exclusion is unclear.").

often cited our inability to have meaningful skin in the game in the types of traditional investment funds they seek as their reason for declining a mandate with us.

In addition, the limitations and complexities that arise from the scope of the definition of “covered fund” unnecessarily puts regulated banking entities at a competitive disadvantage as sponsors of their own funds and in deploying capital for investment. The restrictions imposed by the 2013 Rule have limited our ability to replicate traditional investment fund structures that may be preferable because they are a familiar form of investment in the market from the perspective of investors and investee entities.

These restrictions inhibit our ability to serve our clients effectively, negatively impact our ability to compete with entities not subject to the Volcker Rule and hinder the availability of capital and credit in the United States.¹³ The restrictions have also created a difficult and frustrating experience for our clients. For example, in just the past few months, by virtue of the broad test imported from the Investment Company Act to the definition of “covered fund,” the 2013 Rule has severely restricted our ability to invest in certain incubator companies that provide capital and “know-how” to start-up companies and entrepreneurs and prevented us from investing in a vehicle focused on providing minority investments to women-owned start-up companies.

These are just two examples, but the 2013 Rule effectively forecloses banking entities’ ability to provide capital to other entities that focus primarily on investment in start-up companies. We believe that the proposals described below would not only address these specific issues but, because these vehicles allow banking entities to engage in lending and long-term investment in a more safe and sound way than may be possible through direct lending and investment, we believe adoption of the proposals below would expand the number of market participants for lending and long-term investment and, thereby, increase significantly the level of capital formation in the United States. The frameworks would allow banking entities to provide capital to vehicles to engage in lending and long-term investment subject to the banking entities’ overall compliance with safety and soundness principles.

A. Credit Fund Framework

Even though lending is a core element of traditional banking and is fundamental to a healthy economy, and even though Congress clearly did not intend for the Volcker Rule to negatively affect loan creation,¹⁴ the 2013 Rule severely limits the ability of banking entities to diversify credit exposure with other credit providers through a fund or other legal entity structures, including credit funds.

Properly conducted credit funds originate debt, or otherwise acquire debt, debt securities or participations in extensions of credit to hold to maturity and do not trade such assets for short-term gain or to mitigate losses. In addition to serving as a stabilizing force in the credit markets,¹⁵ credit

¹³ Unregulated private equity funds have become major competitors for traditional bank lending because, among other reasons, they are able to establish funds that diversify risk and that have access to a deep capital pool from long-term investors in a way that most banks cannot through direct lending. *How the Biggest Private Equity Firms Became the New Banks*, Financial Times, Sept. 19, 2018.

¹⁴ See BHC Act § 13(g)(2).

¹⁵ Properly conducted credit funds, particularly during periods of market distress, help secure the supply of credit and reduce the concentration of risk for both individual banking entities and the

funds promote the safety and soundness of individual banking entities by allowing banking entities to effectively syndicate risk *before* the loan is made in ways that direct lending cannot. This is because credit funds can access a broader and deeper capital pool, including institutional investors and foreign capital, that would not otherwise be available in the U.S. credit market and do not require a continual source of third-party funding, as securitizations do, and thus are a more stable credit source.

We understand that the Agencies may have decided not to provide an express exclusion for credit funds in the 2013 Rule because they believed credit funds may be able to rely on the 2013 Rule's exclusions for loan securitizations or joint ventures. Although it is possible that a very limited number of credit funds could be structured to fit within these exclusions, the exclusions were designed for different purposes and, accordingly, are not adequate to permit banking entities to invest in traditional credit funds or provide products meeting client expectations. For example, clients expect products that offer exposure to loans, bonds or potentially warrants related to the extension of credit in a single mandate and, consistent with such expectations, credit funds may hold debt securities or participations in extensions of credit and warrants (representing upside based on coupon rate). Even though such assets are functionally similar to loans or are, as discussed below, assets that a banking entity would otherwise hold in their normal course lending activities, these assets would disqualify such credit funds from being able to rely on the exclusion for loan securitizations.¹⁶ Further, since the adoption of the 2013 Rule, the Agencies have provided additional guidance on the joint venture exclusion that practically eliminates its utility.¹⁷

The Agencies, therefore, should amend the scope of "covered funds" to allow banking entities to use credit funds to engage in lending. We have identified a number of key components of a narrowly focused "Credit Fund" that we believe the Agencies could use to tailor the 2013 Rule:

- i. Its investment strategy or business purpose is to engage in originating extensions of credit (including loans or debt securities) or participating in the origination of such extensions of credit by purchasing interests therein.
- ii. It holds itself out to investors as holding such instruments for at least two (2) years.
- iii. It does not engage in activities that would constitute impermissible proprietary trading (as defined in the Volcker Rule) if conducted directly by a banking entity.
- iv. If it is sponsored by a banking entity, (A) the sponsoring banking entity and its affiliates cannot, directly or indirectly, guarantee, assume, or otherwise insure its obligations, (B) it

banking system as a whole. For example, when global leveraged lending and high yield issuance declined by 71% in 2008, credit funds sponsored by the firm increased their lending by 49%. This funding provided alternative sources of credit when traditional securitizations were not available and traditional balance sheet lending was dislocated, and it allowed U.S. businesses to tap into meaningful financing from institutional investors.

¹⁶ 2013 Rule §§ 10(c)(8), 12(s).

¹⁷ FAQ #15 significantly impaired the joint venture exclusion by limiting its applicability to "operating companies" and prohibiting investments in securities even if held for a longer duration, held to maturity, or held until the dissolution of the entity. The Agencies should reaffirm the scope of the existing joint venture exclusion by rescinding and/or clarifying the Agencies' prior FAQs that imposed unnecessary additional conditions on the exclusion.

must comply with the disclosure obligations under Section __.11(a)(8) of the 2013 Rule and (C) the additional limitations under Section __.15 of the 2013 Rule would apply.

These four key components are designed so that, in refining the scope of “covered funds” to permit investment in and sponsorship of Credit Funds, the Agencies’ modification is narrow and consistent with the underlying purposes of the Volcker Rule and with Congressional intent.¹⁸

The first key component ensures the Credit Fund’s assets are attributable to traditional, primary lending activity. However, Credit Funds do and should be allowed to engage in some lending-related activities that go beyond strictly originating and participating in credit extensions so long as those activities are also permissible for banking entities. For example, in some sectors, it is customary for banking entities (at the request of the borrower) to acquire an equity-like component in connection with the origination of a credit extension as additional compensation for the risk of the credit extension or to keep interest payments at a viable rate for the borrower. Banking entities should not lose the ability to engage in these permissible activities simply because the credit extension is made through a Credit Fund.

The second key component’s minimum holding period requires Credit Funds to have a long-term investment intent (such as two (2) years) and restricts credit extensions that are bought and sold to realize short-term price appreciation.¹⁹

By ensuring that a fund structure cannot be used to engage in impermissible proprietary trading—the central focus of the Volcker Rule—the third key component ensures that banking entities cannot evade the proprietary trading provisions of the Volcker Rule through a Credit Fund.

The fourth key component would ensure certain underlying purposes of the Volcker Rule are taken into account and implemented, such as eliminating the incentive for a banking entity sponsoring a fund to “bail out” the fund in times of distress. The banking entity’s inability to support the fund financially beyond its own investment would be made clear to investors. Finally, this component would expressly apply the “prudential backstop” requirements and limitations of Section __.15 of the 2013 Rule. That is, no transaction, class of transactions or activity would be permitted if it would: (1) involve or result in a material conflict of interest between the banking entity and its clients, customers or counterparties; (2) result, directly or indirectly, in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or (3) pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States.

We believe that by using the foregoing framework the Agencies would amend the scope of “covered funds” to appropriately acknowledge and address the “inviolable rule” that banking entities should not be limited in their ability to engage in lending activities, whether directly or through fund structures and other vehicles, by virtue of the Volcker Rule. Such credit funds must follow prudent credit underwriting standards, real estate appraisal standards and other credit standards, such as diversification requirements and/or concentration limits, reasonably designed to ensure that such funds are operated in a safe and sound manner.

¹⁸ In addition to the four key components, the Agencies could consider other features to further tailor the exclusion, such as prohibiting permitted Credit Funds from offering exposure to synthetic instruments, synthetically hedging exposures, being structured with high leverage or offering redemption rights to investors inconsistent with their long-term investment strategies.

¹⁹ The commentary should clarify that the fund may retain the ability to protect the fund’s interests by disposing of a problem credit during that period.

B. Long-Term Investment Vehicle Framework

Companies seeking capital do not always need debt financing or may need a combination of debt and equity in different layers of a company's capital structure. Through merchant banking equity investments, we have provided crucial capital to a wide variety of businesses for over 30 years, funding vital growth opportunities and catalyzing innovation, and, we believe, facilitated the transformation of such businesses and promoted broader economic growth. Although such investments are subject to a number of requirements and limitations imposed by regulation to ensure the investment activity is conducted in a safe and sound manner (including capital rules, risk management requirements and limits on the degree to which a banking entity can be involved in management of the portfolio company), the 2013 Rule prohibits, on the basis of form alone, the same activity authorized expressly by Congress to be conducted directly (to the extent in excess of the 3% aggregate funds limitations).

A banking entity may wish to make an otherwise permissible equity investment through a fund structure because such a structure typically provides greater risk diversification and protection to investors, including the banking entity. We do not believe that Congress could have intended to prohibit these investments, which would promote safety and soundness, solely on the basis of structure, especially in light of clear legislative history indicating that the Volcker Rule was not intended to disrupt "the way . . . firms structure their normal investment holdings."²⁰

Accordingly, we believe that the Agencies should amend the scope of "covered funds" to ensure that banking entities' otherwise permissible and properly conducted activities, such as providing capital and investment to growing companies, start-ups, infrastructure assets or incubators, are not restricted solely on the basis of whether the banking entity conducts the activity directly or indirectly through a fund or other structure. We have outlined below the key characteristics of what we have termed a "Long-Term Investment Vehicle" that we believe the Agencies could use to tailor the 2013 Rule, consistent with the broader purposes of the Volcker Rule and in a manner that is appropriately tailored:

- i. Its investment strategy or business purpose is to invest in assets in which a financial holding company would be permitted to invest directly under the BHC Act.²¹
- ii. It holds itself out to investors as acquiring and holding long-term assets for at least two (2) years.
- iii. It does not engage in activities that would constitute impermissible proprietary trading (as defined in the Volcker Rule) if conducted directly by a banking entity.

²⁰ *Supra* note 6.

²¹ Because this is a broader set of activities than is permitted for banks and for bank holding companies that do not have financial holding company status under the BHC Act, the commentary should clarify that, although the banking entity need not itself be a financial holding company to make an investment in a Long-Term Investment Vehicle for purposes of the Volcker Rule, the banking entity must also have separate authority under the BHC Act to make the investment (*e.g.*, pursuant to Section 4(c)(6) (permitting bank holding companies to hold up to 5% of the outstanding shares of a company) or Section 4(c)(8) (permitting bank holding companies to hold shares of any company that had been determined by the Federal Reserve to be a proper incident to the business of banking) of the BHC Act). Thus, the exclusion would not expand the types of investments that a banking entity is otherwise permitted to make under the BHC Act.

- iv. If it is sponsored by a banking entity, (A) the sponsoring banking entity and its affiliates cannot, directly or indirectly, guarantee, assume or otherwise insure its obligations, (B) it must comply with the disclosure obligations under Section __.11(a)(8) of the 2013 Rule and (C) the additional limitations under Section __.15 of the 2013 Rule would apply.

Together, these key components have the effect of imposing protective requirements and limits.

The first key component ensures that the Long-Term Investment Vehicle engages only in investments in assets that are permissible for financial holding companies under the BHC Act. Commentary to the exclusion could ensure that it does not inadvertently expand the types of investments that a banking entity itself is otherwise permitted to make under the BHC Act.

The second key component emphasizes and requires that the Long-Term Investment Vehicle's assets be long-term assets. These would include investments in debt, equity and other securities and instruments that, at the time such investments are made, are expected to be held by the issuer for at least two (2) years.²² Focusing on "long-term assets" would ensure that stable investments that promote capital formation and growth are included in these vehicles, such as infrastructure assets or seed equity investments.

For the same reasons discussed with respect to Credit Funds, the third key component ensures the exclusion cannot be used to evade the Volcker Rule's restrictions on impermissible proprietary trading, and the fourth key component eliminates the ability for a sponsoring banking entity to "bail out" or otherwise accept financial responsibility for the Long-Term Investment Vehicle outside of its own investment and also specifically applies the prudential requirements of Section __.15 of the 2013 Rule.

We believe that by applying the foregoing "Long-Term Investment Vehicle" framework to refine the scope of "covered funds," the Agencies would implement a narrow modification to the 2013 Rule to allow banking entities to engage in the same investments that they can engage in directly today. However, the Volcker Rule would continue to prohibit investments in entities (1) engaged in short-term investments and impermissible proprietary trading; (2) engaged in activities not permissible for a financial holding company;²³ or (3) that the sponsoring banking entity can, or is even believed to be likely to, "bail out" or otherwise support financially or that would involve impermissible conflicts of interests with clients, high-risk assets, high-risk trading strategies or safety and soundness issues. Specifically, distressed funds, funds whose mandates have large liquid trading baskets and funds that invest in public securities would continue to be captured by the Volcker Rule.

²² The commentary should clarify that the fund's investment manager may retain the ability to dispose of assets consistent with the investment manager's fiduciary duties. The commentary should also clarify that liquidity events (*e.g.*, IPOs and third-party acquisitions) that occur within the applicable period will not cause a banking entity to lose the ability to rely on the exclusion.

²³ In the case of Long-Term Investment Vehicles held under merchant banking authority, for example, such prohibited funds would include those that "routinely manage" their portfolio companies, that have officer or employee interlocks with their portfolio companies, that have any contractual arrangement with the portfolio company that would restrict the portfolio company's ability to make routine business decisions, and where any officer of the portfolio companies they invest in are supervised by any director, officer or employee of the financial holding company.

The framework we have proposed also ensures (1) that the same requirements, limitations and prudential safeguards already applicable to direct investments made by a banking entity are applied to indirect investments made through a Long-Term Investment Vehicle (*e.g.*, the same capital treatment²⁴ and other regulatory requirements applicable to banking entities' direct merchant banking investments would apply to the extent the investment in a Long-Term Investment Vehicle was held under merchant banking authority) and (2) that only banking entities that would otherwise be permitted to engage in such investments (*e.g.*, only entities with appropriate risk management policies and procedures) will be able to rely on the Long-Term Investment Vehicle concept.

C. Direct Investments Alongside Covered Funds

In the 2013 Rule, the Agencies determined not to adopt a proposed rule that would have aggregated, for purposes of the banking entities' 3% limits on investments in sponsored or advised funds, parallel investments made directly by a banking entity under separate legal authority.²⁵ We believe the Agencies were correct in rejecting that aspect of the proposed rule because such an aggregation rule would have limited the ability of banking entities to structure their normal investment holdings (contrary to Congressional intent) and, perhaps more importantly, would have had no statutory basis. However, in the commentary accompanying the 2013 Rule, the Agencies, without adopting a specific rule, indicated that direct investments made alongside a covered fund should be aggregated for purposes of the 3% limits.²⁶ We have found no basis in the Volcker Rule or in its legislative history for such a position.

The concern regarding evasion cited in the commentary to the 2013 Rule to support the aggregation concept appears to be misplaced because direct investments can continue to be made under separate authority. For example, Congress specifically authorized financial holding companies to engage in merchant banking investments under Section 4(k)(4)(H) of the BHC Act, subject to comprehensive requirements covering, among others, capital rules and risk management. Adding to the limitations imposed by the 2013 Rule on indirect investments through vehicles, the aggregation rule commentary appears to depart from Congress's intent, hampers capital formation and precludes us from providing debt and equity capital directly in a way that is helpful to the businesses in which we would otherwise be permitted to invest.

The Agencies should clarify that the 2013 Rule does not prohibit banking entities from making direct investments alongside covered funds, regardless of whether the fund is sponsored or the investments are coordinated, so long as such investments are otherwise authorized for such banking entities. The guidance should specify that a banking entity will not be deemed to violate the

²⁴ See, *e.g.*, 12 C.F.R. § 225.174.

²⁵ 2013 Rule Preamble at 5734.

²⁶ In the 2013 Rule Preamble, the Agencies noted that (i) a banking entity that sponsors a covered fund should not itself make any additional side-by-side co-investment with the covered fund in a privately negotiated investment unless the value of such co-investment is less than 3% of the value of the total amount co-invested by other investors in such investment and (ii) if a banking entity makes investments side-by-side in substantially the same positions as the covered fund, then the value of such investments shall be included for purposes of determining the value of the banking entity's investment in the covered fund. 2013 Rule Preamble at 5734.

covered fund restrictions if the banking entity determines on a case-by-case basis to exercise its authority to invest alongside a covered fund in one or more investments made by the covered fund.²⁷

II. QUANTITATIVE METRICS REPORTING REQUIREMENTS

Our suggestions in this Part II are intended to achieve the Agencies' stated objectives of avoiding unnecessary compliance costs and simplifying and tailoring the regulatory requirements under the Volcker Rule.²⁸ We believe that an important step toward achieving these objectives is to require that banking entities calculate and report only those metrics that are not duplicative of other metrics and that are most helpful in identifying potentially impermissible activity.

A. Support for Certain Proposals in the Proposed Rule

We appreciate the Agencies' stated objective of "better align[ing] the effectiveness of the metrics data with its associated value in monitoring compliance" with the Volcker Rule.²⁹ In that regard, the Proposed Rule includes sensible changes to certain elements of the 2013 Rule's metrics reporting requirements, including the elimination of the requirement to report Inventory Aging for derivatives positions³⁰ and the elimination of the volatility calculation in the Comprehensive Profit and Loss Attribution metric.³¹ We fully support these proposed changes. We also support the proposed modification of the reporting timeline from the current "T+10" requirement to the more practical "T+20" timeline to account for the size and scale of our firm and the complexity of profit and loss ("P&L") reconciliation and other governance processes that accompany the submission of metrics. Finally, we support the proposed migration to a standard XML technical format for metrics submissions.³²

However, we agree with the concerns raised in certain Trade Group Letters that some of the Proposed Rule's other changes to the metrics reporting requirements would significantly increase the costs and inefficiencies of the compliance program without enhancing the Agencies' or banking entities' ability to identify potentially impermissible proprietary trading activity. We therefore urge the Agencies not to adopt those proposals.

B. Additional Proposed Changes to Existing Metrics Reporting Requirements

We commented favorably on the use of metrics in our February 13, 2012 comment letter responding to the 2011 notice of proposed rulemaking to implement the Volcker Rule (the "2012

²⁷ The proprietary trading restrictions of the Volcker Rule would of course apply to any such direct investments.

²⁸ NPR at 33436 ("The proposal would adopt a revised risk-based approach that would rely on a set of clearly articulated standards for both prohibited and permitted activities and investments, consistent with the requirements of [the Volcker Rule]. In formulating the proposal, the Agencies have attempted to simplify and tailor the 2013 Rule . . . to allow banking entities to more efficiently provide services to clients.").

²⁹ NPR at 33440.

³⁰ NPR at 33507.

³¹ NPR at 33503.

³² Proposed Rule Appendix at para. III.e.

Comment Letter”) and we emphasized that we believed quantitative trading metrics generally represented the best path towards a workable regulatory and compliance regime for the proprietary trading restrictions of the Volcker Rule.³³ This continues to be our view. In designing the metrics reporting requirements under the 2013 Rule, the Agencies required a range of metrics with the express expectation that these metrics may need to be modified or refined at a later date. The Agencies stated in the 2013 Rule Preamble that they intended to evaluate the data collected through metrics reporting “both for its usefulness as a barometer of impermissible trading activity and excessive risk-taking and for its costs,” and would determine “whether to modify, retain or replace the metrics” based on this analysis.³⁴ We believe that the Agencies should use the current rulemaking process to revise the metrics reporting requirements and focus on those existing metrics that are most helpful in identifying potentially impermissible proprietary trading.

We recognize that each banking institution has its unique business model and therefore it is likely that each firm has adopted a different approach to administering its businesses and demonstrating compliance with the Volcker Rule. In order to accommodate these differences while continuing to provide for a useful and efficient application of the quantitative metrics requirements under the 2013 Rule, we recommend that the Agencies grant banking entities the flexibility to agree with their supervisors on those metrics that are most useful in determining whether the banking entity may be engaged in potentially impermissible proprietary trading. Those agreed metrics would be the only metrics that the banking entity is required to report for purposes of the Volcker Rule.

For example, if a banking entity agrees with its supervisors that the risk metric most consistent with the manner in which that banking entity administers and monitors its risk management framework is the Risk and Position Limits and Usage metric (“Metric 1”), then that would be the only risk metric that the banking entity is required to report. However, if a banking entity instead uses Risk Factor Sensitivities (“Metric 2”) as part of its risk management framework, then that banking entity’s supervisors may instead permit that banking entity to report only the Risk Factor Sensitivities metric. If the banking entity and its supervisors agree that the other risk metric is duplicative and does not provide any greater insight in identifying impermissible proprietary trading, that other risk metric should not need to be reported.

With respect to our firm, we have analyzed our calculation and submission of the requisite metrics under the 2013 Rule since the end of the conformance period in 2014 and believe that certain of the 2013 Rule’s metrics are more helpful to us than others in evaluating our trading desks’ activities—for example, whether a trading desk has acted as a market maker or underwriter in accordance with the conditions set forth in the relevant exemption. In particular, we have found the following metrics to be the most helpful: (i) Risk and Position Limits and Usage; (ii) Comprehensive Profit and Loss Attribution (“Metric 4”); and (iii) Customer Facing Trade Ratio (“CFTR” or “Metric 7”).

In our 2012 Comment Letter, we stated that risk management metrics could be helpful to orient the Agencies to a trading desk’s overall size and risk profile.³⁵ We continue to believe that the Risk and Position Limits and Usage metric, as it applies to our firm, provides an appropriate measure of risk that each trading desk is permitted to take, subject to the trading desk’s limits based on the reasonably expected near term demands of clients, customers and counterparties and the firm’s risk appetite. This metric also helpfully reflects whether the trading desk has exceeded the

³³ 2012 Comment Letter at 49.

³⁴ 2013 Rule Preamble at 5772.

³⁵ 2012 Comment Letter at 50.

internal risk limits. Our firm established, implemented, maintained and enforced risk limits according to various market stress scenarios on a daily basis well before the Volcker Rule required us to do so. This practice forms an integral part of our overall risk management framework, with which the Agencies are familiar.

In our 2012 Comment Letter, we stated that comprehensive profit and loss has the potential to be a significant contextual metric that may be helpful in distinguishing permitted activities from prohibited proprietary trading.³⁶ That continues to be our view. For example, the breakdown of this metric into “New Business P&L” and “Inventory P&L,” when analyzed at a trading desk level over a period of time, has been helpful in determining whether a trading desk’s New Business P&L is positive or negative. Further, the metric calculations have been helpful in quantifying the amount of New Business P&L that each trading desk earns from bid-ask spreads and commissions as a market maker or underwriter as compared to the Inventory P&L earned from managing existing inventory.

In our 2012 Comment Letter, we stated that an appropriately defined measure of customer-facing activity (which the Agencies adopted as the CFTR metric under the 2013 Rule) could be an important indicative metric and that it may be helpful for distinguishing prohibited proprietary trading from market making because market makers have a mix of customer and dealer flows.³⁷ We continue to believe that the CFTR metric provides further helpful insight into the nature of our trading activity as either a market maker or an underwriter. The ratio measures the extent to which the trading desk serves as a provider of liquidity to clients, customers and counterparties, either directly or on-exchange, relative to the trading desk’s overall trading activity.³⁸

As a general matter, our firm calculates, monitors and analyzes both risk and comprehensive P&L metrics on a daily basis. These metrics are already reported as part of our prudential oversight processes and are familiar to the Agencies outside of the context of the Volcker Rule. Under our proposal and consistent with existing practice, we would hope to agree with our supervisors that for Volcker Rule purposes we would only be required to calculate the Risk and Position Limits and Usage, Comprehensive Profit and Loss Attribution and CFTR metrics for each trading desk on a daily basis.³⁹

If our supervisors believe that an additional metric would be helpful in order to analyze the nature of a trading desk’s activity as a market maker or underwriter, then we would suggest that we continue to report the Securities Inventory Aging metric (*i.e.*, the 2013 Rule’s Inventory Aging metric, as revised in the manner proposed by the NPR).⁴⁰ With respect to the frequency with which this metric should be calculated and reported, we recommend a calculation period change. We believe that the calculation and reporting of a weekly or a monthly balance for each trading desk may be a simpler measure of the trading desk’s inventory than a daily calculation because a day’s worth of aging provides minimal if any insight into the activities of the trading desk. For example, if a client, customer or counterparty of the firm requests to enter into a 30-year swap and that long-dated

³⁶ 2012 Comment Letter at 51.

³⁷ 2012 Comment Letter at 52.

³⁸ 2013 Rule Appendix at para. IV.c.3.

³⁹ 2013 Rule Appendix at para. IV.a.1–3.

⁴⁰ Among other proposed changes to the Inventory Aging metric, the Proposed Rule would eliminate the requirement to report this metric for derivatives positions or for trading desks other than those that rely on the market making or underwriting exemptions. See NPR at 33507.

swap/derivative position is hedged with equities or bonds, a weekly or monthly calculation and review of this metric (rather than a daily calculation) is more efficient and helpful in understanding the trading desk's rationale for holding both positions for an extended period of time.

In contrast, our experience with certain other metrics that are required to be reported under the 2013 Rule has shown that they are not as helpful to us either because they are duplicative of other metrics or because they are not helpful in identifying potentially impermissible proprietary trading. As such, we would hope to agree with our supervisors that we would no longer be required to calculate and report Risk Factor Sensitivities (Metric 2),⁴¹ Value at Risk and Stress Value at Risk ("Stress VaR" or "Metric 3")⁴² and Inventory Turnover ("Metric 5") metrics⁴³ for the reasons outlined below. We do not believe that this streamlining of the 2013 Rule's metrics would diminish the robustness of our Volcker Rule compliance program or the effectiveness of the Agencies' supervisory toolset to monitor for and identify potentially impermissible proprietary trading.

Risk Factor Sensitivities (Metric 2): In our 2012 Comment Letter, we recommended that banking entities be allowed to designate, in consultation with the relevant regulators, "core" data that would be reported for the Risk Factor Sensitivities metric (among others).⁴⁴ We made this recommendation so that the amount of data reported for this metric would not be duplicative and would be more manageable and interpretable for both Agencies and the banking entity. However, the 2013 Rule's provisions related to Risk Factor Sensitivities instead require a more granular representation of data that is already required to be reported for a trading desk through two other metrics: (i) Risk and Position Limits and Usage and (ii) Comprehensive Profit and Loss.

For example, under the 2013 Rule, if a trading desk trades bonds, the trading desk is required to calculate and report on a daily basis its positions' risk sensitivity with respect to credit spreads for specific credit sectors and market segments, on a sector-by-sector or segment-by-segment basis. The trading desk is also required to report not only the maturity profile of its positions, but also the sensitivity of its positions to interest rates of all relevant maturities. Similarly, if the same trading desk hedges its bond exposures using equity positions, the trading desk is required to calculate and report on a daily basis its positions' risk sensitivities not only with respect to equity prices broadly, but also with respect to equity prices across specific equity market sectors and segments (e.g., small capitalization equities and international equities). Although the Risk Factor Sensitivities may assist other firms in identifying potentially impermissible activities, that has not been our experience over the last four years based on the manner in which we administer our risk management framework. As a result, we have not found this metric additive to the data already available in the Risk and Position Limits and Usage and Comprehensive Profit and Loss metrics, in identifying potentially impermissible proprietary trading.

VaR and Stress VaR (Metric 3): In our 2012 Comment Letter, we stated that Value at Risk ("VaR") and Stress VaR are highly variable across trading desks and vary based on market

⁴¹ Proposed Rule Appendix at para. IV.a.2.

⁴² Proposed Rule Appendix at para. IV.a.3.

⁴³ 2013 Rule Appendix A at para IV.C.1.

⁴⁴ 2012 Comment Letter at 50.

conditions and the types of products traded, and that Stress VaR bears an extremely attenuated relationship to proprietary trading.⁴⁵ This continues to be our view.

Moreover, we have found that the calculations required for the VaR are, for a firm such as ours which bases its risk management on VaR and stress tests, duplicative of the calculations already performed under the Risk and Position Limits and Usage metric. With respect to Stress VaR, this metric is another measure of sensitivity of a given set of aggregated positions in the trading desk's inventory to large and adverse changes in the financial markets. This metric is designed to reflect the risk of future financial loss in the value of a given set of aggregated positions of the trading desk during a period of significant market stress and is not designed to reflect the trading desk's status or activities as a market maker or underwriter. Although Stress VaR is an important prudential metric and a critical input into calculating the market risk-weighted assets of a banking entity, we have not found this metric to be as helpful or additive to us in the Volcker Rule context in identifying whether a trading desk is engaged in potentially impermissible activities.

Inventory Turnover (Metric 5): We believe that the Inventory Turnover metric is not useful as applied to derivatives inventory and is duplicative of the Securities Inventory Aging metric as applied to securities inventory. We believe, therefore, that we should not be required to calculate and report the Inventory Turnover metric. In the preamble to the Proposed Rule, the Agencies noted that they have proposed to narrow the scope of the Inventory Aging metric so that it no longer requires the reporting of derivatives inventory in order to reduce reporting inefficiencies for banking entities without reducing the usefulness of the metric.⁴⁶ We agree with this rationale and believe that it also extends to the Inventory Turnover metric. The Inventory Turnover metric may not always provide an accurate representation of the trading desk's rationale for entering into and maintaining a position, especially if the position is a derivative. For example, taking the example of the 30-year swap described above, if the trading desk acquired equities or bonds (cash securities) as a hedge to the 30-year swap/derivatives transaction, the cash securities will continue to remain in the trading desk's inventory and will not "turn over" for purposes of the Inventory Turnover metric so long as the derivatives transaction exists—even if the cash position is very liquid. The cash securities position is only likely to be disposed of when the derivatives transaction completes its term or is unwound prior to expiry. In our 2012 Comment Letter we noted that Inventory Risk Turnover would not be indicative for illiquid or difficult-to-hedge products, and this also continues to be our view.⁴⁷

If the Agencies agree with this recommendation and amend the Inventory Turnover metric in the same manner that they amended the Inventory Aging metric—*i.e.*, by eliminating the requirement to calculate and report that metric for derivatives positions—then the Inventory Turnover metric would relate only to securities inventory. We have observed that the metrics calculated and reported for securities inventory turnover are duplicative of the Securities Inventory Aging metric (Metric 6AB)—*i.e.*, both metrics reflect in different ways the extent to which the size and volume of trading activities are directed at servicing the demands of customers.⁴⁸ In our 2012 Comment Letter, we stated that the Inventory Aging and Inventory Turnover metrics provide essentially similar

⁴⁵ 2012 Comment Letter at 50.

⁴⁶ NPR at 33540.

⁴⁷ 2012 Comment Letter at 53.

⁴⁸ 2013 Rule Preamble at 5770.

information in many cases.⁴⁹ This continues to be our view, and accordingly we believe that the Inventory Turnover metric should be eliminated.

The FSOC study of January 2011 rightly observed that metrics are best utilized by the Agencies as a source of information for identifying potentially problematic trading activities that may require further study, rather than a comprehensive or dispositive tool to prescribe limits or proscribe activity. Under the FSOC's recommended approach, metrics would provide indicative and contextual data that would enable the Agencies to develop a view (which could evolve over time) as to whether a banking entity's trading activities in a given asset class or market were consistent with the restrictions on proprietary trading.⁵⁰ We believe that our recommendations will meet the goals outlined in the FSOC study and provide the appropriate context about a banking entity's trading activities to the Agencies.

III. ENDORSEMENTS

In addition to the items discussed in **Part I**, we strongly endorse the following proposals to greatly reduce unnecessary compliance burden that the 2013 Rule's covered funds provisions impose on banking entities, among others:

- The proposal in the NPR to eliminate the requirements to include ownership interests in third-party covered funds held in a permissible underwriting or market making capacity in the calculation of the 3% aggregate funds limitations and Tier 1 capital deduction;
- The proposals made in the comment letter from SIFMA, among others, to clarify the existing exclusion for loan securitization vehicles to permit such vehicles to hold a limited amount of debt securities, to revise the exclusion for foreign public funds to make it more consistent with the treatment available for registered investment companies, to add a new exclusion from the definition of covered fund for qualifying family wealth management vehicles and to create more consistency between Super 23A and Section 23A; and
- The proposal in the NPR to expand the risk-mitigating hedging exemption in order to permit banking entities to acquire ownership interests in covered funds to facilitate customer exposure.

With respect to the proprietary trading-related provisions of the Proposed Rule, we strongly support the positions articulated by the Trade Group Letters on the following proposals, among others:

- The Agencies should not adopt the proposal to add an accounting standards-based prong to the "trading account" definition. As the Trade Group Letters have highlighted, the Proposed Rule's accounting test is inappropriate in the context of defining impermissible proprietary trading activity and may have serious adverse effects on banking entities' established accounting and risk management practices.

⁴⁹ 2012 Comment Letter at 53.

⁵⁰ FSOC, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds (Jan. 2011) at 36–44.

- The Agencies should not adopt the proposal to add a requirement for “prompt notification” of a limit breach or a temporary or permanent limit increase and for intra-day limit monitoring. As the Trade Group Letters have highlighted, this requirement is unnecessary in light of the information already provided through the reporting of the Risk and Position Limits and Usage metric and certain other prudential supervisory processes.
- The Agencies should adopt a multi-factor definition of “trading desk,” as is suggested by the NPR⁵¹ and proposed by comment letters submitted by certain Trade Group Letters. A definitional approach that is based on the same criteria typically used by a banking entity to establish trading desks for other operational, management and compliance purposes would align with the practices of banking entities that the Agencies are already familiar with outside the Volcker Rule context.⁵²
- The Agencies should adopt the proposal to expand the scope of financial instruments that may be transacted in reliance on the liquidity management exclusion to include all cleared derivatives and interest rate derivatives on both domestic and foreign government obligations. In addition, we support the position articulated by certain Trade Group Letters to make the liquidity management exemption more usable and less prescriptive by changing the requirements of the exemption into guidance regarding information that may be relevant to include in a liquidity management plan.

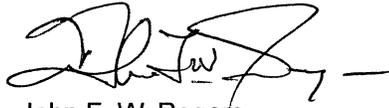
⁵¹ NPR at 33453.

⁵² We continue to be of the view set forth in our 2012 Comment Letter: “[T]he level at which a trading unit’s quantitative trading metrics are measured should be consistent with the level at which a banking entity calculates VaR and other risk limits, determines trading book size, budgets profit and loss, assesses capital usage, analyzes compensation metrics (under guidance from its regulators) and operates its existing risk management processes. Such levels typically reflect customer bases, the levels at which there is clear trading management accountability and authority to direct actions and the levels at which banking entities engage with their prudential regulators on safety and soundness risk metrics.” 2012 Comment Letter at 14 n.45.

OCC, Federal Reserve, FDIC, SEC and CFTC
October 17, 2018

We appreciate your consideration of our comments and suggestions on the Proposed Rule. We would be happy to provide any additional information or to discuss any of our comments and suggestions with the Agencies in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. W. Rogers", with a horizontal line extending to the right.

John F. W. Rogers
The Goldman Sachs Group, Inc.
Executive Vice President, Chief of Staff
and Secretary to the Board

cc:

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