

## MEMORANDUM

TO: File No. S7-14-18

FROM: Division of Trading and Markets

RE: Meeting with Representative of Data Boiler Technologies, LLC

DATE: October 24, 2018

---

On Wednesday, October 24, 2018, representatives of the Securities and Exchange Commission ("SEC") participated in a meeting with a representative of Data Boiler Technologies, LLC ("Data Boiler"). The SEC representatives present were Mark Wolfe, Carol McGee, Andrew Bernstein, Elizabeth Sandoe, and Samuel Litz from the Division of Trading and Markets and Nicholas Cordell from the Division of Investment Management. The Data Boiler representative was Kelvin To.

The participants discussed, among other things, the proposed rule amendments to rules adopted under section 13 of the Bank Holding Company Act related to prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds (commonly known as the "Volcker rule"). Data Boiler provided the SEC with the attached materials during the meeting.

Attachment



## Volcker Revision lets Toxic to Retain and Reflate at Banks



By [Kelvin To](#), Founder and President of Data Boiler Technologies

The FED, SEC, CFTC, OCC, and FDIC (collectively, the “Agencies”) are rounding out public comments on their [proposed revision](#) to the Dodd-Frank Volcker Rule. Below table highlights some **loopholes hidden in the details**:

“Subterfuge” of the Agencies’ proposal	Implications
<a href="#">Accounting prong</a> + trading account/ desk redefinitions	Wide open backdoors (especially Subpart B §_.3(d) liquidity management exclusion) to proprietary trading
Reliance on internal set limit (Subpart B §_.4(b), (e)). Eliminate the need for a definition for “market-maker inventory”. No longer require banks to conduct a demonstrable analysis of historical customer demand, current inventory of financial instruments, and market and other factors regarding the amount, types, and risks of or associated with positions in financial instruments (remove purpose test/ short-term prong).	Downplay risk of unreasonable activities amid cases of <a href="#">blindsided risky positions</a> and <a href="#">dodged regulatory oversight</a> . Trade under the guise of market-making exclusion even it would not fit the <a href="#">SEC’s market-making definition</a> per se. Indirectly weaken stance against “conflict of interest” (Subpart B §_.7(a)) when controls may be bypassed through transfers in-and-out of category between available-for-sale and hold-till-maturity and/or a flipping-switch between dealing with “client” versus “counterparty”.
Sub-B §_.3(c) Presumption of compliance	Eliminate problem by turning a blind eye to it → no demonstration of how exclusions are qualified, which affects §_.4(c), (d), (f), (g)
Reservation of authority on high-risk assets and high-risk trading strategies	Trim almost everything, the residual “High-Risk Asset” and “High-Risk Trading Strategy” (Subpart B §_.7(b) Backstop provision) is hard to enforce
Carve-out ASC-815 derivatives + no correlation analysis + demonstrably reduce (or otherwise significantly mitigate) risk be removed	Invite gaming of control (§_.4(h) and §_.5(b)), use of instruments and inventory level are unaccounted for, risks not “specified” → bets and abuses to cover/ hide losses, violate Fed Reg. 5542
Remove §_.20(c) Appendix B + replace ownership test with vague fund characteristics, carve-out non-traditional structured Hedge Funds / Private Equities	Allow toxic to retain and reflate at banks, circumvent sponsor limit, opposite the President’s “America First” principles
Cost-benefit justifications	It is the deposit insurance mechanism (\$2 billion/ year + cost to bring banks into conformance with FDIC) that out-weighted its benefits (\$73.1 to “move” every \$100 for <a href="#">resolution disbursements</a> in the past 5 years), not Volcker.

The Agencies’ proposal is like “putting the cart before the horse” to retrofit banks’ flawed risk management frameworks as Volcker revision, because such “risk approach” has proven to be ineffective during the last financial crisis. The proposal will [reverse](#) years of effort by Troubled Asset Relief Program to [“separate out the bad bank”](#) and allow toxic to reenter the banking system benefiting merchants of [“junks”](#) whom have little or no skin in the game.

According to St. Louis FED, “U.S. commercial banks holding of treasury and other U.S. agency securities doubled to \$2.4 trillion compared to nine years ago”, it fills a vital money gap where U.S. faces massive sell-off of treasuries from foreign creditors (see [this](#)). Volcker’s favorable policy has made the U.S. government debt less depending on foreign countries, such as China. Tragically, the Agencies’ top officials overlooked the Rule synchronization with President Trump’s [“America First”](#) principle. Consequently, the Agencies’ proposal would inadvertently push banks to abandon prudent investment in U.S. Treasury and other U.S. Agencies securities. As a result, it will cause an [“irrational exuberance”](#) if banks recklessly pursuit higher yields in risky



and illiquid products, which is unsustainable. The timing could not be more disastrous amid the largest [budget deficit](#) in the U.S. history and flatten (possible inversion) of [yield curve](#)!

To address a 2008 liked crisis, the Agencies should holistic review the outdated deposit insurance mechanism because it is unfit for the 21<sup>st</sup> century challenges ([flash crashes](#), [too-big-to-fail](#), and [financial engineering](#) abuses in particular). Unfortunately the FED is proposing to [relax capital rule](#) in parallel with Volcker revision. Hence, there won't be adequate capital to address the short comings of deposit insurance ([moral hazard](#) in particular). The Volcker Rule not only fills this policy gap, it also addresses the too-big-to-fail issues if implement properly. We advocate for using innovative [RiskTech](#) and [BPO](#) to:

- Gauge "reasonableness" in securities inventory each day via an empirical RENTD calculator;
- Distinguish permissible versus prohibited activities, and prevent bypassing of controls via automated surveillance;
- Monitor the banking entity's investments in, and transactions with, any covered funds.


The current and proposed metrics are not effective to deal with rapidly evolving issues proliferated by hidden problems and silos. If trade activities can consistently be scrutinized per our suggestions, then the Agencies may publicize the percentage of suspicious trades being "red-flagged" to enhance transparency of the Rule's implementation. This would essentially eliminate all metric requirements, except the Agencies may ask for, or commission a "[comprehensive profit and loss attribution study](#)" when symptom of control weakness is identified by the surveillance system. Besides, we see an opportunity to streamline the Rule's covered fund provision by rewritten it to become the [21st Century Glass-Steagall Act](#) (i.e. prohibited banks from participating in hedge funds, private equity funds, and the like businesses). To ensure shifted risks won't come back to haunt banks, one should consider the use behavioral science to ensure "exit only, no re-entry" – like "[letting go](#)" of bad habits or toxic assets.

Finally, the Volcker Rule's preventive approach is better than salvaging a troubled bank through other regulatory measures. This is because "demonstrate compliance" is helpful to restore a healthy hierarchy of diversified banks, so that tier-two banks would be ready to step-up in case a failed global systemically important bank is under stress. Bottom line, it is all about streamlining the right priorities to save costs and foster control improvements to achieve the Rule's financial stability goals, I afraid that's not the case in the Agencies' proposal. Please see the full comments that I have submitted to the Agencies in [here](#).



## About Data Boiler Technologies, LLC

We bring big data to solve big challenges in the financial industry. By seeing big and boiling all the puzzle pieces together, you'll benefit from our FinTech innovations that turn problems into strategic opportunities. To realize big data ROI, it's not just the tools but our boiling hot ideas at 212° (the extra degree to make a positive difference).

 <b>Kelvin To</b> Founder and President FinTech Person of the Year Nominee	<b>Homer Cheng</b> Chief Technology Officer
A FinTech Person of the Year nominee, over 20 years of experience in strategic planning and corporate development with a strong emphasis on Business Modeling and LEAN Six Sigma. Kelvin has proven success at Citigroup in formulating a 500+% growth model by leveraging Big Data analytics. Prior to his current role, he was VP for Broadridge, VP Functional Head for Citigroup, subject matter expert in corporate finance for the Institute of Bankers, and also lecturer for various professional organizations. Kelvin holds a MSc degree in Banking from City University, a Master of Management from Macquarie Graduate School, and a BSc degree in Accountancy from Bentley University.	Homer has over 20+ years of experience in the investment banking industry. During his tenure as Executive Director at Goldman Sachs, he managed business critical applications and was part of the global management team for Investment Banking Technology. He is known for his collaborative skills to partner with the business and other technology teams in delivering practical solutions with concrete results. His areas of expertise include trade analytics, risk management, compliance and operations systems development and implementation. Homer is based in California and holds a BSc and Masters of Engineering degree from Cornell University.

**VR Machine:** a suite of patent pending solutions for the Volcker Rule proprietary trading ban compliance

Address Problems:

1. How banks determine "reasonableness" in securities inventory each day
2. How banks distinguish trade intents when both permitted and prohibited trades may involve taking principal positions
3. How banks ensure financial stability and prevent rogue traders from bypassing the controls

**RENTD Calculation (Inventory Control)**

- Web-based application for generating comprehensive RENTD/ Securities Inventory Plan
- Include: (1) historical projection and outliers justification; (2) scholastic models that don't follow historical projection; (3) customize parameters to fit different trading desk natures.

**Independent Testing (Vulnerability Scan)**

- Validate the correct usage of exemptions. Identify proprietary trades that may have slipped through a bank's compliance program.
- The one and only essential proof of bank's compliance program effectiveness.

**Preventive System (Filtering Mechanism)**

- The market's only pre-trade filtering mechanism for Volcker compliance.
- A filtering mechanism to quarantine suspicious proprietary trade activities and qualify exemptions with rigorous tests



# V.R. Machine - Preventive System

A Patent Pending Invention for the Volcker Rule Compliance



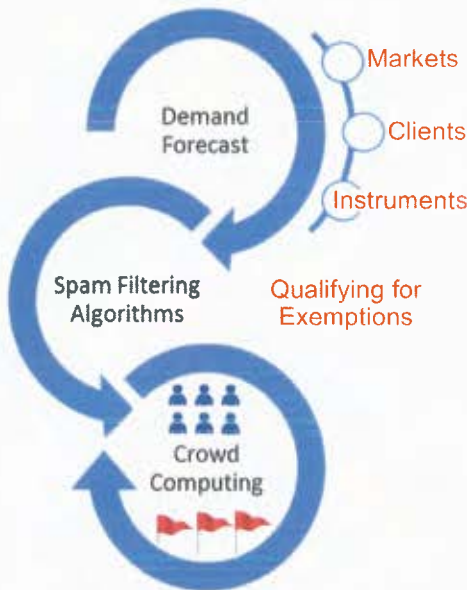
*Nominated for Best Regulatory Compliance Solution*



www.DataBoiler.com

## What it is?

- A filtering mechanism to quarantine suspicious proprietary trade activities
- Qualify exemptions with rigorous tests (Click [here](#) for more information on our independent testing solution)
- Methods to perform inventory forecast (Click [here](#) for more information on our RENTD calculation module)
- Backstop final QA check recognize synthetically created trade patterns, control material exposures, aggregate risk functionalities, and available add-ons for manipulation detection
- Workflow functionalities and more!!

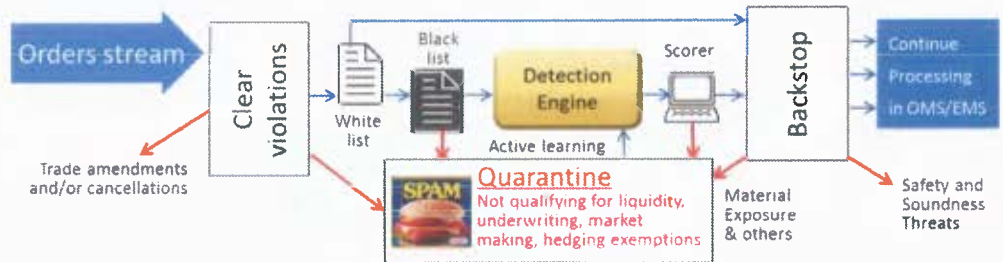


- Utility model that combines crowd collective intelligence with machine learning to implement an iterative complex event monitoring system.

A real-time<sup>\*</sup> preventive risk management system to win the race over rogue traders

<sup>\*</sup>Low latency infrastructure's speed will be collectively determined by consortium of sponsors (~50 milliseconds)

## Why you should care?



- The Rule specifically calls for a "preventive system"; active risk prevention is better than investigating huge losses after-the-facts
- Address the problem in distinguishing trade intents when both permitted and prohibited trades may involve taking principal positions
- Address the impending problem where VaR / daily risk limits are ineffective to defend against rogue traders from escalating/ bumping-up basis risk
- Timing to increase or decrease inventory is critical to determine and substantiate the "reasonableness" of your trade activities
- Address the problem where integrated risk controls embedded in product design may be bypassed through the use of synthetic created trades
- Aligns with your BCBS 239 initiatives; enables your middle-office to match-up against the front-office; adaptive system makes surveillance process easy
- The Rule states that you are "guilty until proven otherwise"

## Our Offerings

- |                                |                                    |
|--------------------------------|------------------------------------|
| • Trade Monitoring             | • Rosters and Workflow             |
| • Dynamic Assessment           | • Pattern Recognition              |
| • RENTD Forecast               | • Manipulation Detection (add-ons) |
| • Correlation Study            | • Material Exposure                |
| • Quantitative Analysis        | • Active Learning                  |
| • Quarantine Suspicious Trades | • Metrics, Audit Trails            |

## SaaS Sharing

No risks are fully mitigated, and there is no end to the regulators demanding more control. It's a race to stop the prohibited before the violators stop you. Toll is needed to run the daily operations and maintain this industry utility, but you only pay for what we can value-add in the process. Network externality enhance the utility values for all crowd users. It is a concerted effort to prevent another financial crisis, [contact us](#) to find out more.

## Contact Us

Phone: 617.237.6111

Email: [info@databoiler.com](mailto:info@databoiler.com)



**DATA BOILER**  
TECHNOLOGIES, LLC

**BIG DATA | BIG PICTURE | BIG OPPORTUNITIES**

# V.R. Machine - Independent Testing<sup>+</sup>

## A Patent Pending Invention for the Volcker Rule Compliance



www.DataBoiler.com



*Nominated for Best Regulatory Compliance Solution*

### What it is?

- Validate the correct usage of exemptions
- Identify proprietary trades that may have slipped through a bank's compliance program
- Vulnerability scan consisting of:
  1. Rule-based checking  
(Clear Violation, White/ Black List)
  2. Scoring Model  
(ABC analysis, timing and size consistency, magnitude measures)
  3. Limited Backstop QA \*  
(Synthetic short/ forward, total return swap, related party thresholds, asset class/ instrument thresholds by desk)

### The Process:

- Load trade data
- Provide RENTD/ securities inventory plan and other desk specific parameters
- Run Tests (compares captured signals)
- Affirm non-violation or flag questionable trades for follow-up action



Fast and essential way for banks to validate that they have attained a satisfactory level of Volcker compliance without the rhetoric.

### Why you should care?



- Banks are required by law to perform independent testing at least annually
- The one and only essential proof of bank's compliance program effectiveness
- All document verification services are considered as weak form of probative endorsements that does not necessarily satisfy the "guilty until proven otherwise" provision
- Favorable scan result as assurance to support the CEO attestation
- Help pinpoint areas where compliance program needs enhancements

### Our Offerings

- Quick pulse check for potential violations  
(No long dreadful questionnaire to test one's articulation ability)
- Independent testing to uncover possible abuses  
(Control effectiveness assurance with audit trails of captured signals)
- Available regulatory version  
(Save examiners' time on field audits, efficient identification of flaws)

### Disclaimers

<sup>+</sup> Independent testing is not a substitute for the Volcker's requirement of having a "preventive system" (Click [here](#) to see our related product offering)

\* This is only a limited check on selected processed transactions, while clients may enjoy a more comprehensive assurance by using our preventive system and other add-on modules (such as control of material exposures, cross-assets/ regions risk aggregation, market manipulation detection, etc.)

### ContactUs

Phone: 617.237.6111

Email: [info@databoiler.com](mailto:info@databoiler.com)



**DATA BOILER**  
TECHNOLOGIES, LLC

**BIG DATA | BIG PICTURE | BIG OPPORTUNITIES**



# V.R. Machine - RENTD Calculation

## A Patent Pending Invention for the Volcker Rule Compliance



www.DataBoiler.com

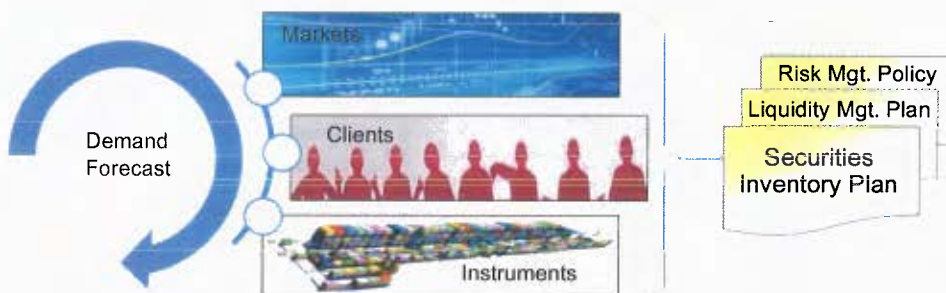


*Nominated for Best Regulatory Compliance Solution*

### What it is?

- Method to perform RENTD (reasonably expected near term demands) forecast
- Making it easy to calculate the absurdly complicated "reasonable" demand
  1. Pick a combination of markets scenarios, client segments, and instruments (Fixed Income, Equity, Derivatives and Others)
  2. Utilize in-house views, assumptions, and market feeds
    - Risk management policy (appetite and tolerance levels)
    - Liquidity management plan
    - Bayesian model, statistics (demand & supply factors)
    - Order imbalances and more
  3. Crunch-out daily inventory projection
- Consider market dynamics and other event-driven factors
- Interface with order books, and banks may mark-off "instruments" that will be squared-off in a certain time horizon
- Optimize time to replenish inventory

### Why you should care?



- ERM - Risk appetite statement  $\neq$  RENTD
- Volcker's "instrument approach" to inventory is different from risk limits
- Value-at-Risk would never be able to cope with the impending problem of when it is the right timing to get in or out of a position (a critical factor to determine "reasonableness" of trade activities)
- Banks need justification for those outlier instruments (infrequent trade with turnover > 60 days) to ensure related market risks are deemed "reasonable"
- No bank wants the regulators to use one "generic" template to measure the effectiveness of a bank's securities inventory plan in comparison to others

### Our Offerings

- Historical projection and outliers justification
- Scholastic models that don't follow historical projection
- Customize parameters to fit different trading desk natures

### Advantages in using our algorithm:

- (a) Validity has already been proven
- (b) Parameters are customizable to ensure fit-for-purpose
- (c) Saves time and costs to deal with nuances in daily reforecast



Scenario planning for the right amount of trades at the right time!

### ContactUs

Phone: 617.237.6111

Email: [info@databoiler.com](mailto:info@databoiler.com)



**DATA BOILER**  
TECHNOLOGIES, LLC

**BIG DATA | BIG PICTURE | BIG OPPORTUNITIES**



**DATA BOILER**  
TECHNOLOGIES, LLC

☎ 617.237.6111  
✉ [info@databoiler.com](mailto:info@databoiler.com)



DataBoiler.com

## Overview and Understanding:

### The Outline

#### Situation:

The Federal Reserve, FDIC, OCC, CFTC, SEC approved \$619 of the U.S. Dodd-Frank Act, also known as the Volcker Rule, in Dec 2013. The law went into effect April 1, 2014 with a full compliance requirement by July 21, 2015. The statute:

Subpart B: Bans covered entities from engaging in Proprietary Trading (Out of scope for this outline);

Subpart C: Restricts investments (sponsoring, acquiring, or retaining an interest) in Covered Funds, and activities in connection with Covered Funds.

#### The Outline and the enclosed Presentation focus on Subpart C: Covered Funds requirements.

Banks are supposed to divest all covered funds held after December 31, 2013 by July 21, 2015. Thus **by now, banks should only have covered funds held prior to December 31, 2013**, which regulators have provided relief to extend the deadline to July 2016 (additional 1-year extension to July 2017 at discretion of the Federal Reserve is highly probable). For certain “qualifying illiquid funds” (in existence on May 1, 2010), regulators allow a transition period for a stable run-off of illiquid interests through 2022, but **exemption has to be obtained on a fund-by-fund basis**.

According to the OCC analysis of 12 CFR Part 44, it estimated that U.S. banks held appropriate \$66 billion of impermissible assets. OCC assumed a fire sale would reduce prices by 5.5%. Therefore, **banks can at least expect \$3.6 billion from the required divestiture of impermissible assets**, such as CLO notes.

Per SIA Partners’ briefing note, “**Bloomberg** has enlisted KPMG in an effort to evaluate the development of a tool that would be used specifically to determine whether or not a secondary trading instrument is or is not a covered fund simply by searching for its CUSIP in a specific database. The tool is **expected to be up and running by July 2016**. Participation in the industry wide effort has been quite **costly**, and the tool itself has **not yet proven to**





617.237.6111  
info@databoiler.com



DataBoiler.com

**provide significant added value, especially for certain American banking entities and Foreign Banking Organizations with significant covered funds activities outside of the United States."**

With reference to a Bloomberg's press release, "CFID uses nearly 30 data fields to extract relevant details from offering documents to classify securities". From public available information, we know Bloomberg's offer has an identifier tag that "will deliver a wide variety of data sets, including an indicative flag called 'covered funds yes', 'covered funds no' or 'needs legal review'". **How many funds fall into Bloomberg's 'need legal review' category is unknown.** This data license product "provides data feeds for clients to feed into databases ... subscribe to the premium service ... **The product will require banks selling securities via the (Bloomberg) terminal to inform Bloomberg whether it is a covered fund ...**" One bank counsel responded to IFLR inquires, quoted **"there will be a not insignificant subscription fee"** and Bloomberg is guarding the data very closely.

SIA further quoted that, "This cost (external counsel), combined with costs for external resources to complement the work of internal teams in organizing and performing the covered funds review process has easily added up to **approximately 15 million dollars or more for the majority of major financial institutions.**"

#### **Objectives:**

Based on initial conversations between [REDACTED] and Data Boiler Technologies (DBT), DBT understands [REDACTED] would like to:

- (1) identify covered funds in their global portfolio:
  - (i) Ensuring that the compliance program **provides a process for identifying** all covered funds that the banking entity sponsors, organizes or offers, and covered funds in which the banking entity invests;
  - (ii) ensuring that the compliance program provides a method for **identifying** all funds and pools that the banking entity **sponsors or has an interest in** and the type of exemption from the Investment Company Act or Commodity Exchange Act (whether or not the fund relies on section 3(c)(1) or 3(c)(7) of the Investment Company Act or section 4.7 of the regulations under the Commodity Exchange Act), and the amount of **ownership interest** the banking entity has in **those funds or pools**;
- (2) ensure ongoing conformance with the Volcker Rule covered fund requirements:
  - (iii) identifying, documenting, and mapping where any covered fund **activities are permitted to be conducted** within the banking entity; and
  - (iv) including an **explanation of compliance**;

This outline and presentation (and any related references) are intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient of this message please notify Data Boiler Technologies, LLC at [info@databoiler.com](mailto:info@databoiler.com) and delete and destroy all copies immediately.



617.237.6111  
info@databoiler.com



DataBoiler.com

- (v) **describing** sponsorship activities related to covered funds; and
- (vi) establishing, maintaining and **enforcing internal controls** that are reasonably designed to ensure that its covered fund activities or investments comply with the requirements of section 13 of the BHC Act and subpart C, and
- (vii) **monitoring** of the banking entity's investments in and transactions with any covered funds.

looks for outside help in achieving the above two objectives and seeking an alternate vendor choice besides the Bloomberg's offer. DBT is in the process of evaluating the business requirements. Possibly we'll partner with an international Business Process Outsourcing (BPO) company and reference data provider to jointly prepare a suite of comprehensive services at a competitive price to give the industry an alternate choice for the Volcker Rule Covered Funds compliance.

#### Disclaimers:

In preparing for this outline and the enclosed presentation, DBT has reviewed the covered Funds requirements as suggested by [Davis Polk](#) and other regulatory compliance documents, while noted that:

- This outline and the enclosed presentation are for informational purposes only and do not constitute legal advice or create a client relationship.
- Please consult your own attorney for legal advice on the issues discussed in this outline and the enclosed presentation.
- Because of the generality of this outline, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.



# DATA BOILER

## TECHNOLOGIES, LLC

617.237.6111  
info@databoiler.com



DataBoiler.com

### Tasks and Assumptions:

Following tasks aim to augment conformance with the Volcker Rule covered fund requirements. The suggested tasks are assumed to help substantiate that a given investment or activity does not qualify as covered fund nor does it imply relationships with covered funds. The task list may not be all encompassing. The information provided herein is generalized, and may not be applicable in all situations. Please consult your own attorney for legal advice on the compliance effectiveness discussed in this presentation.

Please ☒ to indicate interest in the following Compliance Technologies (CT) and/or Business Process Outsourcing (BPO) or Consulting Services (CS).

### Presentation

✓	Sq.#	Tasks	Covered	248.10(C)	Remarks
<input type="checkbox"/>	1	Identify Registered Investment Companies (RIC) under the 1940 Act	No *		EDGAR
<input type="checkbox"/>	1.1	Verify if the issuer is in compliance with SEC 1940 Act §18 requirements that imposes limitations on funds' issuance of "senior securities", generally prohibiting, among other things, a fund from issuing or selling any senior security representing indebtedness unless it maintains 300% asset coverage.	No *	(b)(3)	Segregated account approach; Alt - 2010 ABA Derivatives Report, the bifurcated approach set out in CESR's Global Exposure Guidelines
<input type="checkbox"/>	1.2	Identify Business Development Companies (BDC) - Section 54(a) 1940 Act	No *		Form N-6 & 54A; 1933/34Act N-2
<input type="checkbox"/>	2	Verify if issuer use 3(c)(1) or 3(c)(7) exemption	Yes *		SEC Rule 506 Reg. D
<input type="checkbox"/>	2.1	Verify other 1940 Act Exemption - Section 3(c)(3) Common Trust Funds	No		17CFR 270.3c-4, 15USC 80a3(c)(3)
<input type="checkbox"/>	2.2	Verify other 1940 Act Exemption - Section 3(c)(5) Certain Types of REITs	No		SEC Form S-11
<input type="checkbox"/>	2.3	Verify other 1940 Act Exemption - Section 3(c)(11) Pension & Profit Sharing Plans	No	(c)(12) Excluded Private Funds	Section 401 of title 26
<input type="checkbox"/>	2.4	Verify other 1940 Act Exemption - SEC Rule 3a-7 Asset-Backed Securities which entitle their holders to receive payments that depend primarily on the cash flow from static pool	No		<> 17 CFR 230.501(a) accredited investor / 230.144A private resales of securities to institutions
<input type="checkbox"/>	2.5	Verify if the issuers of certain mortgage-backed securities are sponsored by government-sponsored enterprises (GSEs)	No	FAQ#9	Flow of Funds Accounts of the US
<input type="checkbox"/>	3	Identify Foreign Public Fund (Non-US issuer)	No *	(c)(1)	Table L.125; SIFMA - XLS <> 1940 Act, Form 6-K, annual

This outline and presentation (and any related references) are intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient of this message please notify Data Boiler Technologies, LLC at [info@databoiler.com](mailto:info@databoiler.com) and delete and destroy all copies immediately.





# DATA BOILER

## TECHNOLOGIES, LLC

617.237.6111

info@databoiler.com



DataBoiler.com

				Excluded Foreign Public Funds	report on Form 20-F / Form 40-F
<input type="checkbox"/> 3.1	Validate Foreign Public Fund <ul style="list-style-type: none"><li>public offering to retail investors</li><li>&gt;= 85% sold to investors that are not US person</li><li>The fund sponsor is not a US Organized or located banking entity</li></ul>	No			
<input type="checkbox"/> 3.1.1	Validate Foreign Public Fund is not an affiliates of the U.S. Banking Sponsor <ul style="list-style-type: none"><li>does not own, control, or hold with the power to vote &gt;= 25% of the voting shares of the fund</li></ul>	No*		<a href="#">FAQ#14</a>	<a href="#">§248.12(b)(i)</a>
<input type="checkbox"/> 3.2	Verify foreign issuer as if it was subjected to US securities laws (<101 beneficiary, is not and do not propose to make public offer; owned by qualified purchaser)	No*		(c)(12) Excluded Private Funds	
<input type="checkbox"/> 3.2.1	Verify if the foreign issuer may qualify for excluded private fund	No			
<input type="checkbox"/> 3.3	Document the seeding vehicles that will become a Foreign Public Fund <ul style="list-style-type: none"><li>Written plan to document the banking entity's plan to market the vehicle to third-party investors and convert it into a foreign public fund within the time period specified in § 248.12(a)(2)(i)(B) of subpart C, and the banking entity's plan to operate the seeding vehicle in a manner consistent with the investment strategy, including leverage, of the issuer upon becoming a foreign public fund.</li></ul>	No		<a href="#">FAQ#5</a>	
<input type="checkbox"/> 4	Identify Foreign Pension Funds <ul style="list-style-type: none"><li>Organized and admin outside of the US for the benefit of foreign beneficiary;</li><li>No single participant or beneficiary with a right to more than 5% of its assets or income.</li></ul>	No		(c)(5) Excluded Foreign Pension or Retirement Funds	<a href="#">Section 897(l)(2)</a>
<input type="checkbox"/> 5	Verify if Wholly Owned Subsidiary / Joint Venture / Acquisition Vehicle met exclusions <ul style="list-style-type: none"><li>JV exclusion is not met by an issuer that raises money from a small number of investors primarily for the purpose of investing in securities;</li><li>The Rule intended to prevent the JV exclusion from being used as a</li></ul>	No*		(c)(2), (c)(3), <a href="#">FAQ#15</a>	Para support under guidance of legal counsel



# DATA BOILER

## TECHNOLOGIES, LLC

☎ 617.237.6111  
✉ [info@databoiler.com](mailto:info@databoiler.com)



DataBoiler.com

	vehicle to raise funds from investors primarily for the purpose of profiting from investment activity in securities for resale or other disposition or otherwise trading in securities.		
<input type="checkbox"/> 6	Identify Loan Securitizations	No *	(c)(8) Exclusion for loan securitizations
<input type="checkbox"/> 6.1	Verify if assets & holdings of the issuers comprised solely of permissible interest rate derivatives or Foreign Exchange derivatives	No	
<input type="checkbox"/> 6.2	Verify if assets & holdings of the issuers comprised solely of Special Unit of Beneficial Interest (SUBIs) and Collateral Certificates	No	
<input type="checkbox"/> 6.3	Verify if assets & holdings of the issuers comprised solely of directly held loan	No	
<input type="checkbox"/> 6.4	Verify if assets & holdings of the issuers comprised solely of cash equivalents and securities received in lieu of debts previously contracted	No	
<input type="checkbox"/> 6.4.1	Verify if assets & holdings of the issuers comprised solely of other servicing assets that display characters of cash equivalents <ul style="list-style-type: none"><li>"Cash equivalents" mean high quality, highly liquid short term investments whose maturity corresponds to the expected or potential need for funds by the securitization and whose currency corresponds to either the underlying loans or the asset-backed securities.</li></ul>	No	<a href="#">FAQ#4</a>  any servicing asset that is a security must be a permitted security under § 248.10(c)(8)(iii)
<input type="checkbox"/> 7	Identify Asset-Backed Commercial Paper (ABCP) Conduits	No *	(c)(9) Excluded ABCP Conduits
<input type="checkbox"/> 7.1	Verify if ABCP conduit: <ul style="list-style-type: none"><li>Issue only ABS comprised of a residual interest and ABS &lt; 397 days</li><li>Hold only permissible assets for a loan securitization</li><li>Initial issuance, no secondary market purchases</li><li>Commitment to provide 100% and unconditional liquidity coverage</li></ul>	No	See 6.1 – 6.4
<input type="checkbox"/> 8	Identify Covered Bonds <ul style="list-style-type: none"><li>debt obligation issued by a foreign banking organization or an eligible entity that is a wholly-owned subsidiary of a foreign banking organization</li></ul>	No *	(c)(10) Excluded Covered Bonds
<input type="checkbox"/> 8.1	Verify if Covered Bond Entities own or hold dynamic or fixed pool of loans and	No	Dual-recourse, claim in priority to unsecured, BV > notional value, Independent cover pool monitor See 6.1 – 6.4

This outline and presentation (and any related references) are intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient of this message please notify Data Boiler Technologies, LLC at [info@databoiler.com](mailto:info@databoiler.com) and delete and destroy all copies immediately.



# DATA BOILER TECHNOLOGIES, LLC

☎ 617.237.6111  
✉ [info@databoiler.com](mailto:info@databoiler.com)



DataBoiler.com

	other permitted assets			
<input type="checkbox"/> 9	Verify if Small Business Investment Companies (SBIC) / Public Welfare Investment Funds / Qualified Rehabilitation Expenditures met exclusion	No	(c)(11)	SBA license#, 12USC24 CRA, IRC47
<input type="checkbox"/> 10	Verify if Separate Accounts – Insurance Co/ Bank Owned Life Insurance met exclusion	No	(c)(6) (c)(7)	Para support under guidance of legal counsel
<input type="checkbox"/> 11	Ongoing monitoring of entities regulated under the investment company act	Yes	(b)(3)	Fund-by-Fund Portfolio Mgt.
<input type="checkbox"/> 11.1	Verify if Financial Market Utilities (FMU) may rely on 3(b)(1) exemption to the definition of investment company	No*	(d)(1) non-specific	Business nature other than those that would make it an IC
<input type="checkbox"/> 11.2	Verify if Cash Collateral Pools may rely on sections 3(c)(1) and 3(c)(7) of the Investment Company Act to avoid being an investment company • register cash collateral pools with the SEC as IC, or to operate pools as separate accounts to exclude from the covered fund definition	No*	(d)(2) Non-specific	See 2
<input type="checkbox"/> 11.3	Verify if Pass-through REITS may rely on sections 3(c)(1) and 3(c)(7) of the Investment Company Act to avoid being an investment company (See 2) • Pass through statutory trust between the banking entity and the REIT may not rely on the exclusion contained in section 3(c)(5) or 3(c)(6)	No*	(d)(3) Not-specific	3(c)(5) not engaged in business of issuing redeemable securities... 3(c)(6) engaged in business other than investing, reinvesting ...
<input type="checkbox"/> 11.4	Verify if Employee Securities Companies may rely on exemption available under section 80a-6(b) of the Investment Company Act • ... shall apply, the Commission ... weight ... form of organization and the capital structure ..., the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, ...	No*	(d)(7) Not-specific	Form S-8
<input type="checkbox"/> 11.5	Verify if certain mortgage-backed securities issuers sponsored by government-sponsored enterprises ("GSEs") may rely on an exclusion or exemption from the definition of investment company	No*	<a href="#">FAQ#9</a>	Section 2(b) of Investment Company Act
<input type="checkbox"/> 12	Ongoing monitoring of Commodity Pools • exempt pool status under CFTC Rule 4.7(a)(1)(iii) • QEP only, no units have been publicly offered	Yes	(b)(2)	NFA Form 7-R
<input type="checkbox"/> 13	Verify if Municipal Securities Tender Option Bond Transactions may rely on exclusion for loan securitizations • not permitted to provide credit enhancement, liquidity support, and other	No*	(d)(4) Not-specific	Section 13(g)(2) of the BHC Act, See 6

This outline and presentation (and any related references) are intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient of this message please notify Data Boiler Technologies, LLC at [info@databoiler.com](mailto:info@databoiler.com) and delete and destroy all copies immediately.





# DATA BOILER

## TECHNOLOGIES, LLC

617.237.6111  
info@databoiler.com



DataBoiler.com

	similar services if it serves in a capacity covered by section 13(f) with the tender option bond program <ul style="list-style-type: none"><li>If a tender option bond vehicle is a covered fund and an exclusion from that definition is not available, then banking entities sponsoring such a vehicle will be subject to the prohibitions in §.14 of the final rule and the provisions of section 13(f) of the BHC Act.</li></ul>			
<input type="checkbox"/> 14	Verify if Credit Funds may rely on exclusion for joint ventures, or exclusion for loan securitizations <ul style="list-style-type: none"><li>partnerships with third-party capital and invest in loans or make loans or otherwise extend the type of credit that banks are authorized to undertake on their own balance sheet</li></ul>	No *	(d)(6) Not-specific	See 5 and 6
<input type="checkbox"/> 15	Verify if Venture Capital Funds may be covered fund <ul style="list-style-type: none"><li>Permit from making a venture capital-style investment in a company, business, so long as</li><li>That investment is not through or in a covered fund, such as through a direct investment made pursuant to merchant banking authority or through business development companies which are not covered funds.</li></ul>	Yes *	(d)(5) Not-specific	section 13(d)(1)(G)

The List of Tasks to be continued ...

<input type="checkbox"/> 16	Would an entity that is formed and operated pursuant to a written plan to become a foreign public fund receive the same treatment (i.e. excludes from the definition of covered fund a registered investment company and business development company, including an entity that is formed and operated pursuant to a written plan to become one of these entities)?		<a href="#">FAQ#5</a>	See 3
<input type="checkbox"/> 17	Is a registered investment company or a foreign public fund a banking entity subject to section 13 of the BHC Act and implementing rules during its seeding period?		<a href="#">FAQ#16</a>	
<input type="checkbox"/> 18.1	May a banking entity's compliance program for market making-related activities include objective factors on which a trading desk may reasonably		<a href="#">FAQ#17</a>	

This outline and presentation (and any related references) are intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient of this message please notify Data Boiler Technologies, LLC at [info@databoiler.com](mailto:info@databoiler.com) and delete and destroy all copies immediately.



# DATA BOILER

## TECHNOLOGIES, LLC

☎ 617.237.6111  
✉ [info@databoiler.com](mailto:info@databoiler.com)



DataBoiler.com

		rely to determine whether a security is issued by a covered fund? Furthermore, may a market maker meet its compliance program requirements by making use of a shared utility or third party service provider that utilizes objective factors if the market maker reasonably believes the system of the shared utility or third party service provider will identify whether a security is issued by a covered fund?		
<input type="checkbox"/> 19		How do the requirements of section 13 of the BHC Act and the final rule apply to a banking entity during the conformance period? For instance, must a banking entity deduct its investment in a covered fund from its tier 1 capital prior to the end of the conformance period?	<a href="#">FAQ#3</a>	
<input type="checkbox"/> 19.1		Is a banking entity required to deduct from its tier 1 capital an investment in a collateralized debt obligation backed by trust preferred securities retained pursuant to section 248.16(a) of the interim final rule (Qualifying TruPS CDO)?	<a href="#">FAQ#21</a>	
<input type="checkbox"/> 20		Conditions require that the covered fund, for corporate, marketing, promotional or other purposes does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof). What does it mean for a covered fund to share the same name or a variation of the same name with a banking entity?	<a href="#">FAQ#6</a>	
<input type="checkbox"/> 21		Does the marketing restriction apply only to the activities of a foreign banking entity that is seeking to rely on the SOTUS covered fund exemption or does it apply more generally to the activities of any person offering for sale or selling ownership interests in the covered fund?	<a href="#">FAQ#13</a>	
<input type="checkbox"/> 22		Section 248.14 Covered Transaction (Super 23A)	Section 14(a)-(d)	