

United States House of Representatives
 Committee on Financial Services
 2129 Rayburn House Office Building
 Washington, DC 20515

October 16, 2018

The Honorable Steven T. Mnuchin
 Secretary
 U.S. Department of the Treasury
 1500 Pennsylvania Avenue, NW
 Washington, DC 20220

The Honorable Joseph M. Otting
 Comptroller
 Office of the Comptroller of the Currency
 400 Seventh Street, SW
 Washington, DC 20219

The Honorable Jerome H. Powell
 Chairman
 Board of Governors of the
 Federal Reserve System
 20th St. and Constitution Ave., NW
 Washington, DC 20551

The Honorable Jelena McWilliams
 Chairman
 Federal Deposit Insurance Corporation
 17th Street, NW
 Washington, DC 20429

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

The Honorable Christopher Giancarlo
 Chairman
 Commodity Futures Trading Commission
 1155 21st Street, NW
 Washington, DC 20581

Dear Secretary Mnuchin, Comptroller Otting, Chairman Powell, Chairman McWilliams, Chairman Clayton, and Chairman Giancarlo:

We write in support of your efforts to simplify and streamline the regulatory burdens associated with Section 619 of the Dodd-Frank Act, also known as the Volcker Rule.¹ Since January 2011, the Committee on Financial Services has held numerous hearings and received compelling testimony regarding the rule's overly complex aspects. The verdict is clear: Important market making functions have been chilled because, consistent with former Federal Reserve Governor Dan Tarullo's observation in his farewell remarks, the Volcker Rule "as it has been drafted and implemented...is too complicated." Unfortunately, the effects of this overregulation and the resultant lack of liquidity are being felt, in particular, on Main Street—where job creators rely on market making to obtain funding for short-term operations and long-term growth, consumers rely on liquid debt markets to obtain credit cheaper and to more easily access a variety of credit products, and savers rely on market makers to efficiently satisfy redemptions and preserve their asset values.

Regardless of whether you believe, as we do, that the Volcker Rule is a solution in search of a problem,² lawmakers and regulators have a duty to ensure the regulatory

¹ See OCC, Federal Reserve, FDIC, SEC, and CFTC, *Proposed Revisions to Prohibitions on Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 83 Fed. Reg. 33432 (July 17, 2018) (the "Notice of Proposed Rulemaking"). Under Section 619 the Secretary of the Treasury, in his capacity as Chairperson of the Financial Stability Oversight Council, is "responsible for coordination of the regulations issued under" the Volcker Rule.

² In remarks before the Peterson Institute of International Economics on March 30, 2010, Former Federal Reserve Chairman Paul Volcker, himself, conceded that "proprietary trading in commercial banks was...not central" to the financial crisis; and Former Treasury Secretary Timothy Geithner testified before Congress on September 10,

framework of any regulation is efficient, clear, and transparent so that the consequences of the regulation do not unduly impede economic growth. While Congress continues to pursue statutory fixes to alleviate its inefficiencies, time is past for the implementing regulators to revise the Volcker Rule to limit the many unintended consequences of their own doing from when the Rule was implemented four years ago. The Notice of Proposed Rulemaking (“NPR”) was an important “first step” in that process, as the proposal raises important points regarding the Volcker Rule’s implementation. Nonetheless, we urge you to consider all comments and to adopt a simplified final rule that is better tailored, reduces disproportionate compliance costs, and ensures greater harmony among the litany of regulators currently charged with administering the Rule.³

One specific area in which the NPR fails to reduce the Volcker Rule’s unnecessary complexities is the limited amendments proposed to the Rule’s “covered funds” provisions. Businesses, infrastructure projects, and real estate developments, among others, historically have obtained financing through funds raised by banks in partnership with clients who make long-term investments and extensions of credit to growing companies. Such funds provide the same types of financing that banking entities are authorized to do on their own balance sheet, and they do so in a manner that provides an added layer of safety and soundness for the banking entity by sharing any risks with clients. But the current construct of the Volcker Rule’s covered funds definition unduly impedes banks’ and their affiliates’ abilities to perform their traditional functions through fund structures. Accordingly, pursuant to the discretion Congress granted to your agencies in Section 619, the final amended Volcker Rule should provide greater regulatory relief and offer additional exclusions under the definition of a “covered fund” for venture capital and other entities engaged in lending and long-term investing that promote both growth and capital formation. There is no good reason for the Volcker Rule to deny banks and their affiliates the ability to accomplish through fund structures—particularly those that provide stable capital and encourage economic growth—what they can do directly. As Federal Reserve Chairman Powell recently testified before this Committee, “these activities are not ones generally that threaten safety and soundness.”⁴

2009, that “most of the losses that were material for the weak institutions—and the strong, relative to capital—did not come from [proprietary trading] activities.”

³ H.R. 4790, the “Volcker Rule Regulatory Harmonization Act,” will streamline regulatory authority under the Rule by consolidating rulemaking authority with a single regulator and, for the purposes of examination and enforcement, designating the primary Federal regulator for a covered entity as the sole regulator in those capacities. This important legislation garnered the support of 300 members of the House, including more than 80 percent of this Committee, and we hope the Senate will move swiftly to send it to the President’s desk. In the meantime, the multitude of regulators responsible for finalizing the proposed amendments must ensure those amendments provide for consistency in treatment across agencies, which to date has been lacking.

⁴ Testimony of the Honorable Jerome H. Powell, Chairman of the Board of Governors of the Federal Reserve System, before the Committee on Financial Services, “Hearing on Monetary Policy and the State of the Economy” (July 18, 2018). Legislative history reflects that the two primary authors of the Dodd-Frank Act shared in 2010 the views Chairman Powell stated more recently: After Representative Jim Himes expressed concern that the covered funds provision of the Rule “could technically apply to lots of corporate structures,” including “when firms own or control subsidiaries or joint ventures that are used to hold other investments,” and thus may “disrupt the way...firms structure their normal investment holdings,” then-House Financial Services Committee Chairman Barney Frank responded that “the distinction [Mr. Himes drew] is very much in this bill” and expressed his expectation that the regulators also would “appreciate that distinction [and] maintain it.” Similarly, then-Senate Banking Committee Chairman Chris Dodd responded to a question from then-Senator Barbara Boxer—who had expressed concern with the potential impact of the Rule on venture capital investment—by stating that “properly conducted venture capital investment will not cause the harms at which the Volcker Rule is directed” and that he “would expect the appropriate Federal regulators to exempt it using their authority under Section 619.”

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We look forward to a final rule that will fix the needless complexities of the Volcker Rule and, in turn, decrease costs for investors, savers, and the economy which rely on liquid markets.

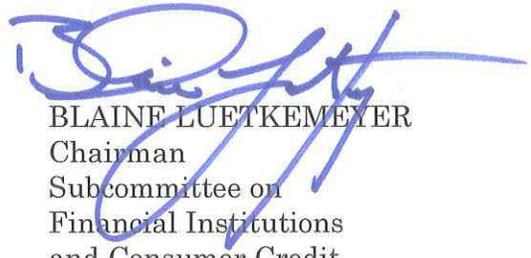
Sincerely,



JEB HENSARLING
Chairman



BILL HUIZENGA
Chairman
Subcommittee on
Capital Markets, Securities,
and Investment



BLAINE LUETKEMEYER
Chairman
Subcommittee on
Financial Institutions
and Consumer Credit