MEMORANDUM

TO: File No. S7-14-18

FROM: Division of Trading and Markets

RE: Meeting with Representatives of the Bank Policy Institute

DATE: April 12, 2019

On Friday, April 12, 2019, representatives of the Securities and Exchange Commission ("SEC") participated in a meeting with representatives of the Bank Policy Institute ("BPI"). The SEC representatives present were Lizzie Baird, Mark Wolfe, Carol McGee, Andrew Bernstein, Aaron Washington, and Samuel Litz from the Division of Trading and Markets; Paul Cellupica, Sarah ten Siethoff, Brian Johnson, Aaron Gilbride, and Matthew Cook from the Division of Investment Management; and Christine Sibille from the Office of Compliance Inspections and Examinations.

The BPI representatives present were Gregg Rozansky, Adam Kezsbom (Barclays), Eric Kriftcher (Bank of America), John Loatman (BNP Paribas), Jeffrey Siegel (BNP Paribas), Jennifer Xi (BNY Mellon), Curtis Tao (Citi), Jahad Atieh (JPMorgan Chase), Ursula Pfeil (PNC), Shawn Maher (RBC Capital Markets), Whitney Chatterjee (Sullivan and Cromwell), Camille Orme (Sullivan and Cromwell), Ulrich Hannich (UBS), Jason Fincke (US Bank), Tim Becker (Wells Fargo), Daniel Nelson (Wells Fargo). 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"). BPI provided the SEC with the attached materials during the meeting.

Attachment

PROPOSED REGULATORY CHANGES TO VOLCKER RULE IMPLEMENTING REGULATIONS

	TOPIC & CROSS-REFERENCE TO BPI COMMENT LETTER	SUMMARY OF RECOMMENDATION[1]
1.	**Support for Certain of the NPR's Proposed Amendments**	
A.	**Proprietary Trading**	
	i. *Risk-Mitigating Hedging (pp. 29–30)*	• As proposed in the NPR, eliminate the current requirements that the (1) hedging activity "demonstrably" reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged and (2) banking entity conduct correlation analyses regarding its hedges.
	ii. *Liquidity Management Exclusion (p. 28)*	• Support the NPR's amendment of this exclusion to include foreign exchange forwards and swaps, and physically settled cross-currency swaps (further modifications to this exclusion are discussed in Section 4.C.i below).
	iii. *Loan-Related Swaps (pp. 30–31)*	• As proposed in the NPR, adopt an exclusion from the definition of "proprietary trading" for loan-related swaps.
	iv. *Trade Errors (p. 59)*	• Support the NPR's proposal to add an exclusion that confirms that transactions to correct *bona fide* trade errors are not considered proprietary trading.
B.	**Covered Funds**	
	i. *Aggregate Funds Limit & Tier 1 Capital Deduction (pp. 49–50)*	• As proposed in the NPR, remove the Final Rule's requirement to apply the aggregate funds limit and Tier 1 capital deduction to ownership interests in a third-party covered fund held in a permissible underwriting or market-making capacity. • Extend this proposal to covered funds that are advised, but not sponsored, by banking entities.
	ii. *Risk-Mitigating Hedging*	• As proposed in the NPR, allow a banking entity to acquire or retain an ownership interest in a covered fund when acting as an intermediary on behalf of a client that is not itself a banking

[1] The recommended revisions to the Volcker Rule regulation (79 Fed. Reg. 5536, Jan. 31, 2014) set out in this document are not intended to be comprehensive in nature, but rather to be high level and focused on key issues and reforms that we support and are necessary in order to support asset-liability management and commercial banking activities which are outside the intended ambit of the Volcker Rule.

All cross-referenced pages used in this document relate to corresponding pages in the BPI comment letter (the "**BPI Comment Letter**"), filed with the Federal Reserve, OCC, FDIC, SEC and CFTC on October 17, 2018, in response to the interagency NPR on the Volcker Rule (83 Fed. Reg. 33432 (July 17, 2018)). The BPI Comment Letter is available at: https://bpi.com/bpi-files-comment-letter-on-proposed-volcker-rule-amendments/. Capitalized terms used herein and not defined have the meanings assigned to them in the BPI Comment Letter.

	TOPIC & CROSS-REFERENCE TO BPI COMMENT LETTER	SUMMARY OF RECOMMENDATION[1]
	(pp. 48–49)	entity to facilitate exposure by the client to the profits and losses of the covered fund as this would accommodate banking entities' client facilitation and risk management activities.
	iii. *SOTUS Exemption* *(pp. 61–62)*	• Support the Proposed Rule's amendments in respect of covered fund activities and investments conducted "solely outside the United States."
C.	**Compliance**	
	i. *Appendix B* *(p. 30)*	• Support the removal of Appendix B to the Final Rule.
	ii. *Tailoring Compliance Requirements* *(pp. 55-58)*	• Support the tailoring of the Final Rule's compliance requirements based on a banking entity's level of trading assets and liabilities (subject to certain further refinements as described in Section 4.A.ii below).

2.	**"Trading Account" Definition and Conflicts of Interest Management**	
	i. *"Trading Account" Definition* *(pp. 7–28)*	• Apply a clear, objective, standard that covers only the short-term trading activity that Congress intended to capture (e.g., one approach could involve applying only the MRC Prong and an amended Dealer Prong to MRC Rule banks). • If the Dealer Prong is retained, modify the Dealer Prong to clarify that only those short-term positions or activities required to be held or conducted by a dealer and held as part of, or to hedge risks associated with, its dealing inventory, are covered. • If the Short-Term Intent Prong is retained, replace existing rebuttable presumption with a presumption of compliance for positions held for longer than 60 days (and a consultative process with exam teams for trades within 60 days).
	ii. *Backstop Provision on Material Conflicts of Interest*	• Permit banking entities to meet conflicts management requirements by relying on their existing information barrier infrastructure. This should apply with respect to business units that are used for both private/public transactions, so long as there is appropriate segregation of trading desks and personnel who work on opposite sides of the market. • Clarify the fact that a particular individual may know of a potential conflict should *not* prevent reliance on this infrastructure, unless the banking entity knows, or should reasonably know, that its policies and procedures are ineffective in restricting access to sensitive information.

3.	**Covered Funds Provisions**	
A.	**“Covered Fund” Definition – Generally** (pp. 31–50)	• Retain the Final Rule’s “covered fund” definition (based on the ’40 Act and Sections 3(c)(1) and 3(c)(7) thereof) to avoid an increased compliance burden associated with implementing a new definitional framework. • Modify and supplement the definition’s exclusions to enable banking entities to engage in activities that the Volcker Rule did not intend to capture (*see* discussion in Section 2.B below). • Adjust exclusions to permit use of fund structures to engage in transactions with clients, or make investments, that they are otherwise permitted to do directly under otherwise applicable banking regulations. • Eliminate restrictions and overly prescriptive requirements that disrupt asset management, commercial banking activities and other client services.
B.	**Exclusions**	

	i. *Foreign Public Funds*
	(pp. 33–36)
		• Create bright-line exclusions for the following types of foreign funds:
		    • funds qualified to be offered to retail investors in any non-U.S. jurisdiction (not necessarily the fund’s “home jurisdiction”) where fund is subject to substantive requirements and regulation under retail investor protection and disclosure laws; and
		    • funds listed on an internationally-recognized exchange.
		• Simplify and streamline the conditions of the existing FPF exclusion to:
		    • permit foreign funds authorized to be publicly offered to retail investors in jurisdictions other than their “home jurisdictions” to rely on the exclusion;
		    • eliminate the requirement that a FPF be sold “predominantly” through one or more public offerings outside the U.S.;
		    • eliminate the 15% limit on directors’ and employees’ (including immediate family members) ownership interests in a U.S. banking entity-sponsored FPF; and
		    • permit a U.S. banking entity to own up to 25% (rather than 15%) of a FPF that it sponsors after the seeding period.

	ii. *Client Facilitation Structures* *(pp. 36–38)*	• Provide an exclusion for structures with a single investor (or single group of affiliated investors) that are established to provide clients with economic exposure that a banking entity could offer to the client directly. • Conditions to the availability for this exclusion could include that banking entities: • may not guarantee or insure expressly the entity or its obligations in any way that would

		legally require the banking entity to "bail out" the structure; and • must observe FRA Section 23B's "market terms" requirement when transacting with the entity.
	iii. *Family Wealth Management Vehicles* *(pp. 39–42)*	• Provide an exclusion for family wealth management vehicles. • Conditions to the availability for this exclusion could include: • vehicle is owned directly or indirectly by one or more "family customers" or up to 10 "closely related" persons, or if the vehicle is a trust, the grantors are family customers; • the banking entity (i) provides *bona fide* trust, investment advisory, etc. services to the vehicle; (ii) does not acquire or retain, as principal, an ownership interest in the vehicle (other *de minimis* interests for structuring or governance purposes); and (iii) does not directly or indirectly guarantee, assume or insurance the vehicle's obligations or performance; and • vehicle is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities.
	iv. *Loan Securitizations* *(pp. 42–44)*	• Permit loan securitizations to hold a limited amount (e.g., 10% of total assets) of non-loan assets, such as debt securities.
C.	**Super 23A**	
	i. *Section 23A Exemptions* *(pp. 45–47)*	• Incorporate the exemptions provided under FRA Section 23A and Regulation W (e.g., intraday extensions of credit that facilitate settlement, transactions fully secured by cash or U.S. government securities, correspondent banking deposits, etc.).
	ii. *Section 23A Quantitative Limits* *(p. 47)*	• Replace Super 23A's current prohibition on covered transactions with Section 23A's quantitative limits (including both the aggregate and individual limits on the amount of covered transactions that a banking entity may enter into with all affiliates or any particular affiliate) – the combination of the quantitative limits and the modification/addition of exclusions as described in Section 2.B above (i.e., excluding family wealth management vehicles and client facilitation structures, etc.) would provide firms with greater flexibility to conduct activities that the Volcker Rule did not intend to restrict.
D.	**"Ownership Interest" Definition**	
	i. *Exclusions from "Ownership Interest" Definition*	• Exclude the following from the definition of "ownership interest": • loans and senior debt instruments generally (notwithstanding that they may include

	(pp. 44–45)	features associated with mezzanine and senior tranches of securitizations, such as rights to remove a manager/trustee for cause, etc.); • debt instruments that have (i) a stated interest rate (whether fixed or linked to an external benchmark) and fixed payment at maturity (and for which non-payment constitutes an event of default) and (ii) no equity-like rights (e.g., warrants or earnings participations); • senior tranche instruments that contain no equity-like features other than voting rights.

4.	**Additional Proposals Supported by BPI**	
A.	**Compliance**	
	i. *CEO Attestation Requirement (p. 56–57)*	• If the CEO attestation requirement is retained for any banking entities, modify the requirement to provide that a CEO attests that the banking entity has in place processes reasonably designed to achieve compliance with the Volcker Rule to the best of his or her knowledge and based on information presented to the CEO during the attestation process. • Limit CEO attestation to the largest firms—applying this requirement to smaller-sized institutions would undermine the NPR's proposals to streamline the compliance burden for these firms and permit tailoring of compliance programs.

	ii. *Compliance Program Requirements and Tailoring (pp. 53–56)*	• Support the agencies' efforts to simplify the current compliance program requirements by tailoring the requirements to appropriately reflect the size, scope and risk profile of a banking entity.
		• If the agencies retain a framework based on trading assets and liabilities, then the framework should be amended as described in BPI's Comment Letter:
		  • Increase the proposed trading assets and liabilities thresholds for firms with "significant" and "limited" trading assets and liabilities to \$20 billion (from \$10 billion) and \$5 billion (from \$1 billion), respectively.
		  • Provide a two-year conformance period for firms moving into a higher "tier" and a cure period for temporary fluctuations.
		  • Clarify the standards that banking entities should use to determine "trading assets and liabilities" (e.g., the FR Y-9C definition for firms that report on that form).

B.	**"Banking Entity Definition"**	
	i. *Non-consolidated, Independently-managed*	• Provide an exclusion from the "banking entity" definition for non-consolidated and independently-managed entities that a banking entity has limited or no practical ability to control

	Entities *(pp. 50–52)*	(notwithstanding that such entities may be captured by BHC Act "affiliate" and "subsidiary" concepts).
	ii. *Certain Private Funds* *(pp. 52–53)*	• Provide exclusions for the following types of private funds from the "banking entity" definition: ◦ family wealth management vehicles in which the banking entity does not hold an ownership interest for economic participation (notwithstanding that the banking entity may serve in a governance arrangements (e.g., trustee or GP); ◦ public welfare and community development investment and similar funds; ◦ employee securities companies; and ◦ foreign public funds that meet the conditions of FAQ #14 (e.g., less than 25% owned after the seeding period; banking entity provides advisory and other services to the fund in compliance with local law);
	iii. *Qualifying Foreign Excluded Funds* *(p. 62)*	• Formally adopt the policy statement and stay on enforcement related to the "banking entity" status of "qualifying foreign excluded funds" (*i.e.*, foreign excluded funds with respect to which the foreign banking entity's investment/sponsorship would meet the requirements of the SOTUS exemption as if the fund were a covered fund).
	iv. *RICs and FPFs During Seeding Period* *(p. 49)*	• Formally adopt FAQ guidance that RICs and FPFs should not be treated as "banking entities" during the seeding period. • Confirm FAQ commentary indicating that the 3-year seeding period is an example (and not a limit) on a permissible seeding period.
C.	**Proprietary Trading**	
	i. *Liquidity Management* *(pp. 28–29)*	• Allow banking entities to conduct bona fide ALM and liquidity management activities more efficiently and in accordance with the bank's needs and structure within the scope of the exclusion. • Permit all interest rate and FX derivatives (including non-deliverable FX forwards, and investment-grade debt securities permitted under 12 C.F.R. Part 1 and corresponding state authorities) that are used for liquidity and interest rate risk management. • Eliminate the "near term" funding requirement to allow management of broader ALM interest rate, capital or liquidity risks. • Replace the "appreciable profits or losses as a result of short-term price movements" requirement with a requirement that financial instruments held under the exclusion are not acquired for the purpose of generating appreciable profits or losses as a result of short-term price movements.
	ii. *Risk-Mitigating Hedging*	• Clarify that this exemption allows hedging of individual or aggregate positions (e.g., portfolio

	(pp. 29–30)	hedging), hedging of any identifiable risks, and hedges relying on any hedging strategy. • Eliminate the current enhanced documentation requirements associated with risk-mitigating hedging transactions that are conducted by one desk to hedge positions of another desk. • Clarify that banking entities may rely on analyses and documentation that demonstrates hedge effectiveness prepared in connection with other internal processes to demonstrate compliance with the exemption.
	iii. *Trading in Domestic and Foreign Government Obligations (pp. 59–60)*	• Permit trading in non-U.S. government obligations that receive a zero percent risk weight under the Federal Reserve's, OCC's and FDIC's capital rules. • Eliminate the requirement that financial instruments traded pursuant to the foreign government obligations exemption must be "an obligation of, or issued or guaranteed by, the foreign sovereign under the laws of which" the applicable foreign entity is organized. • Expand the exemptions for trading in domestic and foreign government obligations to permit trading in derivatives that reference the government obligations.
D.	**Other Proposals**	
	i. *Venture Capital Funds (pp. 60–61)*	• Provide an exclusion from the "covered fund" definition for venture capital funds.
	ii. *Joint Ventures*	• Clarify that the FAQ guidance regarding the joint venture exclusion does not apply to joint ventures that hold securities for long-term disposition.