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February 9, 2012

Mark D. Cahn, Esq.
General Counsel
Office of the General Counsel
United States Securities and Exchange Commission
100 F Street, NE
Mail Stop 9010
Washington, DC 20549

Dear Mark:

Pursuant to our conversation the other day, please find enclosed a memorandum sent to the Board of Governors of the Federal Reserve System, dated January 23, 2012, regarding Section 13 of the Bank Holding Company Act ("Volcker Rule"). We believe this memorandum, authored by three leading law firms, accurately describes the correct reading of the statute concerning the scope of the so-called "insurance company exemption" from the Volcker Rule's general prohibition on proprietary trading and covered fund investing. More fundamentally, it provides effect to what we believe was the true Congressional intent when it authored the insurance company exemption; namely, that insurance companies should be permitted to continue to invest in accordance with state insurance investment laws, including in private equity and hedge funds (termed 'covered funds' in the proposed Volcker Rule rulemaking issued last fall).

We believe Congress provided this exemption for insurance companies because it recognized insurance companies need to be able to continue to invest in a prudent manner that aligns with the long-term obligations of insurance companies. The fundamental business model of an insurance company does not involve engaging in short-term profit seeking; in other words, the sorts of investment activities which fall into the scope of "proprietary trading." Rather, the primary mission of an insurance company is to invest policyholder contributions with a long-term horizon in mind. Diversification of an insurer's investments in multiple asset classes that include covered funds is a key method to accomplish this mission. In fact, state insurance investment laws recognize the need for diversification and impose limits on an insurer's exposure to various asset classes, such as real estate, foreign securities and equity securities.

In this regard, we also wanted to forward to your attention a letter signed by 17 Members of Congress, dated January 27, 2012, and addressed to the four agencies that issued proposed rulemaking concerning the Volcker Rule. We believe this letter succinctly highlights that Congress, in passing the Volcker Rule, did not intend to prohibit insurance companies from investing in covered funds for their general account.

For your convenience, in addition to the memorandum and Congressional letter, we have attached the relevant portions of the Section 13 of the Bank Holding Company Act, including Section 13(a)(1), Section 13(d) and Section 13(h)(4), each of which are referenced and discussed in more detail in the memorandum. After you have had a chance to review these materials, I would be more than happy to discuss with you at your convenience.

Sincerely,

Brandon Becker

Brandon Becker
Executive Vice President and Chief Legal Officer

Enclosures

January 23, 2012

Via Electronic Mail

MEMORANDUM TO: Scott G. Alvarez
Anna M. Harrington
Jeremy R. Newell
Christopher M. Paridon
(Board of Governors of the Federal Reserve System)

RE: Permitted Activities Exemptions under Section 13
of the Bank Holding Company Act of 1956

As a follow-up to our meeting with you on January 13, 2012, we write to set forth our analysis of Section 13[1] of the Bank Holding Company Act of 1956 (the "BHC Act"), commonly referred to as the "Volcker Rule," and why certain "permitted activities" in Section 13(d) apply to both proprietary trading and hedge fund and private equity fund activities.

We understand that many comment letters you will receive will cover the importance from a policy perspective of applying certain permitted activities exemptions to both covered funds and proprietary trading, as well as the anomalous results that would follow from a contrary reading. In this memorandum, we address only the legal question of the statute's meaning in light of its plain language and structure. In our view, the statute is unambiguous on this point, and nothing in the legislative history is inconsistent with our reading.

Section 13(a) is entitled "In General" and is followed by Section 13(a)(1), entitled "Prohibition," which contains the basic prohibition of the Volcker Rule. It reads:

> "Unless otherwise provided in this section, a banking entity shall not—
> (A) engage in proprietary trading; or
> (B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund."[2]

The prohibition on proprietary trading and the restrictions related to covered funds are thus both contained in Section 13(a).

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[1] 12 U.S.C. § 1851.

[2] For purposes of this letter, we refer to hedge funds and private equity funds collectively as "covered funds," as in the notice of proposed rulemaking implementing Section 13 of the BHC Act. *See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 76 Fed. Reg. 68,846 (proposed Nov. 7, 2011).

Section 13(d) is entitled "Permitted Activities," and its first subsection, 13(d)(1), is also entitled "In General." In this "In General" subsection, Congress sets out the language that will govern all permitted activities in the list that follows. Section 13(d)(1) reads:

> "*Notwithstanding the restrictions under subsection (a)*, to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, *the following activities (in this section referred to as 'permitted activities') are permitted…*"[3]

Because the "In General" subsection of (d)(1) does not distinguish between the proprietary trading prohibition in subsection (a)(1)(A) and the restrictions related to covered funds in subsection (a)(1)(B) and instead says "[n]otwithstanding the restrictions under *subsection (a),*" the general principle established by the language and structure of the statutory text is that each of the enumerated exceptions for permitted activities in subsection (d)(1) applies equally to *both* the proprietary trading *and* the restrictions related to covered funds within subsection (a). Structurally, each one of the permitted activities is listed in a subsection of, and hence governed by, the introductory language of the "In General" section of 13(d)(1). The language and structure of the general section make clear, therefore, that to the extent Section 13(d)(1) contains no further textual direction, a permitted activity will apply to both the proprietary trading prohibition in 13(a)(1)(A) and the restrictions related to covered funds in 13(a)(1)(B).[4]

Sections 13(d)(1)(B), (D) and (F) set forth, respectively, the permitted activities of underwriting and market-making-related activities, activities on behalf of customers, and activities by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate. Each of these sections refers

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[3] All emphasis on statutory text in this letter has been added.

[4] *See* SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 20:22 (7th ed., Norman J. Singer ed.) ("A proper application of the 'whole act interpretation' will ascribe to the exception equal power over all other provisions of the act unless it is specifically limited to particular sections."). *See also, Gonzales v. Oregon*, 546 U.S. 243, 273 (2006) ("statutes should not be read as a series of unrelated and isolated provisions.") (internal quotation marks and citation omitted); *Conroy v. Aniskoff*, 507 U.S. 511, 515 (1993) (it is a "cardinal rule that a statute is to be read as a whole…since the meaning of statutory language, plain or not, depends on context.") (internal quotation marks and citation omitted); *U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc*. 508 U.S. 439, 455 (1993) ("[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law," and statutory construction "must account for a statute's full text, language as well as punctuation, structure, and subject matter.") (internal quotation marks and citation omitted); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 528 (1989) (Scalia, J., concurring) (The meaning of terms on the statute books ought to be determined by that which is most compatible with the surrounding body of law into which the provision must be integrated); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (Scalia, J.); Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 17 (1997) (courts should construe congressional statutes to mean what "a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris.*")

to "the purchase, sale, acquisition, or disposition of *securities and other instruments described in subsection (h)(4)*."[5] The cross reference to subsection (h)(4), which in its totality is the definition of the core defined term "proprietary trading," is used to incorporate only the list of "securities and other instruments" in that subsection into the permitted activities exemptions,[6] as neither Section 13 nor any other section of the BHC Act defines "securities and other instruments."[7]

In contrast, when Congress wanted to use its core defined term "proprietary trading," it did so without hesitation. For example, Section 13(d)(1)(H) applies only to the proprietary trading restrictions and specifically exempts *"[p]roprietary trading* conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States." Section 13(d)(1)(G) and (I) apply only to the covered funds prohibitions and exempt "[o]rganizing and offering *a private equity or hedge fund*" and "[t]he acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a *hedge fund or a private equity fund* by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States." Thus, it is inescapable that Congress drafted language differently when it intended for a specific exemption to apply only to the proprietary trading prohibitions or only to the covered fund restrictions, and Congress quite plainly did not use such language in subsections (d)(1)(B), (D) and (F).[8]

In conclusion, we think it is clear in the plain language and structure of Section 13, and the absence of any legislative history to the contrary, that the scope of the permitted activities of underwriting and market-making, transactions on behalf of customers, and transactions by insurance companies and their affiliates for the general account of the insurance company includes *all* activities otherwise prohibited under

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[5] Section 13(h)(4) describes "…any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine." An "equity, partnership or other ownership interest" in a covered fund that is a security would clearly be included in this description, as evidenced by the proposed definition of the term "Ownership interest" in §__.10(b)(3) of the proposed rules. 76 Fed. Reg. 68846, 68950 (Nov. 7, 2011).

[6] Section 13 of the BHC Act frequently cites other statutes to incorporate definitions but not to incorporate operative provisions. For example, Section 13(d)(1)(E) cites the definition of "small business investment companies" in Section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662); Section 13(h)(1) cites the definition of "insured depository institution" in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); Section 13(h)(2) defines "hedge fund" and "private equity fund" by reference to an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act.

[7] The text and structure of Section (h)(4) also support this reading since (h)(4) itself contains two parts: first a description of short-term principal trading and then, separated by a comma, a laundry list of the types of securities and other instruments covered.

[8] *See Keene Corp*. v. *United States*, 508 U.S. 200, 208 (1993) ("where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotations omitted).

subsection (a), whether those activities would involve proprietary trading or covered funds.

We hope that this analysis will prove helpful as the final rule is drafted.

Cleary Gottlieb Steen & Hamilton LLP

Davis Polk & Wardwell LLP

Sullivan & Cromwell LLP

Congress of the United States
Washington, DC 20515

January 27, 2012

Honorable Ben S. Bernanke
Chairman
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Honorable John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
Department of Treasury
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219

Dear Chairman Bernanke, Chairman Schapiro, Acting Chairman Gruenberg, and Acting Comptroller Walsh:

We are writing to express our concerns about provisions included in the recently proposed regulations issued jointly by your respective Agencies, which would implement the "Volcker Rule" provisions outlined in Section 619 of the Dodd-Frank Act. In light of recent statements made at the House Financial Services Committee's joint hearing entitled "Examining the Impact of the Volcker Rule on Markets, Businesses, Investors and Job Creation," we are concerned about how the proposed regulations will affect certain investments made by insurers. Specifically, we want to emphasize that Congress did not intend to prohibit insurance companies from investing in covered funds for their general accounts and we encourage the regulators to make this intent clear in the final rule.

Section 619(d)(1)(F) of the Dodd-Frank Act includes trading in an insurance company's general account as a "permitted activity and, by its terms, exempts permitted activities from both the "proprietary trading" and "covered fund" restrictions of the Volcker Rule. While the proposed regulation provides an exemption from the proprietary trading restrictions for insurer general accounts, this exemption does not expressly extend to allowing the general account to hold an ownership interest in a covered fund. In addition, the proposed rule defines covered funds in a way that appears to essentially designate all private equity funds as covered funds.

It is important to note that state investment laws applicable to insurance companies domiciled in that state already impose rigorous limitations on the categories of investments insurance companies may hold, including investments in covered funds. State insurance regulators establish conservative limits on the percentage of assets that an insurer may invest in equities and generally stipulate further limitations on investments in non-exchange traded equity investments. Regulators also have comprehensive regulatory and reporting regimes for examining an insurer's investment activities and guarding against excessive risk taking in their investment portfolios. State insurance laws recognize that private equity fund investments are widely utilized by insurers to diversify their investment portfolios, both for the benefit of their general accounts and on behalf of customers (including in separate accounts). Private equity fund investments generally offer a long-term investment horizon and, therefore, are an integral tool for ensuring adequate returns for policyholders over extended periods.

It appears from the recent hearing that the Agencies may exclude covered funds from the insurer exemption. We believe it is imperative that, as the Agencies move forward, they follow Congressional intent and permit insurance companies to continue investing in covered funds for their general accounts. We also request the Agencies confirm, prior to releasing the final rule scheduled in the spring 2012, they will follow this intent. There would be little benefit to restricting these types of investments for insurers (particularly as state insurance laws already serve to impose diversification requirements on insurers). Including investments in covered funds within the exemption for insurers would follow the directive included in Section 619 of the Dodd-Frank Act to "appropriately accommodate the business of insurance." It is our hope the final regulations do not result in any disruption for insurers.

Thank you for your consideration of this request. Please feel free to contact us to discuss this issue further.

Sincerely,

CAROLYN McCARTHY
Member of Congress

JUDY BIGGERT
Member of Congress

ED PERLMUTTER
Member of Congress

MICHAEL GRIMM
Member of Congress

GARY PETERS
Member of Congress

STEVE STIVERS
Member of Congress

JIM HIMES
Member of Congress

PATRICK McHENRY
Member of Congress

GWEN MOORE
Member of Congress

JAMES RENACCI
Member of Congress

JOHN CARNEY
Member of Congress

ROBERT DOLD
Member of Congress

GREGORY MEEKS
Member of Congress

ROBERT HURT
Member of Congress

WILLIAM LACY CLAY
Member of Congress

BILL HUIZENGA
Member of Congress

NAN HAYWORTH
Member of Congress

H. R. 4173

One Hundred Eleventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, two thousand and ten

An Act

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dodd-Frank Wall Street Reform and Consumer Protection Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) NOTICE.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) OTHER PROVISIONS OF LAW APPLICABLE TO SUPERVISED SECURITIES HOLDING COMPANIES.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) BANK HOLDING COMPANY ACT OF 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

"(a) IN GENERAL.—

"(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

"(A) engage in proprietary trading; or

"(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

"(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

"(b) STUDY AND RULEMAKING.—

"(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

"(A) promote and enhance the safety and soundness of banking entities;

"(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

"(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

"(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

"(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

"(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

"(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

"(2) RULEMAKING.—

"(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

"(B) COORDINATED RULEMAKING.—

"(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

"(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

"(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

"(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

"(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

"(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

"(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

"(c) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

"(A) 12 months after the date of the issuance of final rules under subsection (b); or

"(B) 2 years after the date of enactment of this section.

"(2) CONFORMANCE PERIOD FOR DIVESTITURE.—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

"(3) EXTENDED TRANSITION FOR ILLIQUID FUNDS.—

"(A) APPLICATION.—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

"(B) TIME LIMIT ON APPROVAL.—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

"(4) DIVESTITURE REQUIRED.—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

"(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

"(B) the date on which any extensions granted by the Board under paragraph (3) expire.

"(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

"(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2) and (3).

"(d) PERMITTED ACTIVITIES.—

"(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

"(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

"(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

"(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

"(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

"(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

"(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

"(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

"(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

"(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

"(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

"(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

"(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

"(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

"(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

"(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

"(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

"(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

"(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

"(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

"(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

"(2) LIMITATION ON PERMITTED ACTIVITIES.—

"(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

"(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

"(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

"(iii) would pose a threat to the safety and soundness of such banking entity; or

"(iv) would pose a threat to the financial stability of the United States.

"(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

"(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

"(4) DE MINIMIS INVESTMENT.—

"(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

"(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

"(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

"(g) RULES OF CONSTRUCTION.—

"(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

"(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

"(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

"(h) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

"(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

"(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

"(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(D) such institution does not—

"(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

"(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

"(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

"(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

"(4) PROPRIETARY TRADING.—The term 'proprietary trading', when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

"(5) SPONSOR.—The term to 'sponsor' a fund means—

"(A) to serve as a general partner, managing member, or trustee of a fund;

"(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

"(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

"(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

"(7) ILLIQUID FUND.—

"(A) IN GENERAL.—The term 'illiquid fund' means a hedge fund or private equity fund that—

"(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

"(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding