Please note that the comments expressed herein are solely my personal views

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States
www.sec.gov

Chris Barnard

22 November 2011

- 17 CFR Part 255
- File No. S7-41-11
- Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

Dear Sir.

Thank you for giving us the opportunity to comment on your Notice of proposed rulemaking: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds.

The Office of the Comptroller of the Currency, Treasury (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Securities and Exchange Commission (SEC), collectively the Agencies, are proposing a rule that would implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

I am in favour of your proposed rules, which will certainly promote financial stability and investor confidence, and improve the safety and soundness of the financial system. I will restrict my comments here to those pertaining to the impact of the proposed rules on insurance companies and insurance business generally.

I generally support the common-sense approach that you have taken regarding insurance companies. The traditional business of insurance companies does not pose excessive systemic risk to the financial system. The insurance business model is based on pooling policyholders' risks, and increasing size provides greater diversification here. Product design normally includes various buffers and management levers in order to reduce risk, and

investment policy is predominantly based on matching assets against liabilities. Economic and financial crises rarely generate a "run on insurers" that banks often face. Insurance companies are also much less interconnected than banks, do not generally require wholesale funding and carry out few systemically important functions. Insurance companies are also subject to fewer conflicts of interest compared with banks, in that most of their investment and trading activity is on behalf of customers.

Despite these characteristics, I strongly agree with the recommendation of the Financial Stability Oversight Council (FSOC) regarding insurance business and the implementation of the Volcker Rule, which states that:

> "Finally and in general, the appropriate Agencies should carefully monitor fund flows between banking entities and insurance companies, to guard against "gaming" the Volcker Rule, whether it is through innovative insurance products and financial instruments, like Bank Owned Life Insurance, or use of separate accounts. Agencies should work with the state insurance agencies in monitoring activity of bank affiliate insurance companies and captive insurers. To the extent such products become vehicles to enable impermissible activity, Agencies should consider procedures for designating such financial instruments under Section 13(h)(4) of the BHC Act."[1]

I support such monitoring, which should be ongoing. This should promote investor confidence in insurance companies and insurance business, and help to improve the safety and soundness of the financial system.

Permitted trading on behalf of customers

Proposed rule §__.6(b) identifies certain categories of transactions that the Agencies consider to be "on behalf of customers". Of these §__.6(b)(iii) permits trading for the separate account of insurance policyholders by a banking entity that is an insurance company, subject to certain conditions. I strongly support this proposal, as the separate account has to be managed in the best interest of the policyholders, gains and losses from such trading activity accrue to the policyholders and therefore the policyholders assume the market risk, and there are fewer conflicts of interest in this kind of business.[2] Furthermore, it is important that this trading activity is explicitly permitted as the statutory exemption for insurance companies only covers permitted trading for an insurance company's general account[3].

[1] See Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds, FSOC, January 2011. Available at: http://www.treasury.gov/initiatives/fsoc/Pages/studies-and-reports.aspx

[2] The insurance company normally levies an annual management charge on the assets of the separate account, so one could argue that the insurance company also benefits from successful trading which increases the amount (value) of the annual management charges (and vice-versa).

[3] See section 13(d)(1)(F) of the Bank Holding Company Act, added by Dodd-Frank.

Permitted trading by a regulated insurance company

Proposed rule §__.6(c) implements section 13(d)(1)(F) of the Bank Holding Act (BHC), which permits a banking entity to purchase or sell a covered financial position if the banking entity is a regulated insurance company acting for its general account or an affiliate of an insurance company acting for the insurance company's general account, subject to certain conditions. I support this proposal, which closely tracks the statutory language. However, I would also recommend that further consideration should be given to proposed §__.6(c)(4). This permits such trading if:

> "The appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in paragraph (c)(3) of this section is insufficient to protect the safety and soundness of the covered banking entity, or of the financial stability of the United States."

I would recommend that, should the Agencies, after consultation with the FSOC, determine that the relevant insurance law is insufficient to protect the safety and soundness of the covered banking entity, or of the financial stability of the United States, then the relevant regulator should be given a limited period of time in order to address the insufficiency of the relevant insurance law.

For completeness, it should be noted that an insurance company that trades for its general account, in the normal course of business, may also be engaging as principle in purchases or sales of covered financial positions, depending on the definition of "general account", and on whether policyholder and shareholder or other insurance assets are properly ringfenced, and also depending on the relevant insurance law. However, I would suggest that, given the relatively small scale of such trading activity, it is unlikely that "insurance law" would be insufficient to protect the safety and soundness of the covered banking entity, or of the financial stability of the United States.

Bank owned life insurance

Proposed §__.14(a)(1) permits a covered banking entity to acquire or retain an ownership in, or to act as sponsor to, a separate account that is used solely for the purpose of purchasing an insurance policy for which the covered banking entity is the beneficiary, as long as the covered banking entity does not control the investment decisions regarding the underlying assets or holdings of the separate account. I support this proposal, which will allow a covered banking entity to continue to manage its obligations relating to employee benefit arrangements in a cost-effective manner.

In response to your specific requests for comment I would add the following:

128. Yes, the proposed rule's exemption of trading for separate accounts by insurance companies is effective. I would only recommend that §__.6(b)(iii)(C) should clarify which "owners of the insurance policies" should be acceptable for the exemption to apply.
129. The proposed rule's implementation of the exemption should ideally have minimal impact on the "normal" insurance activities of insurance companies affiliated with banking entities.
132. I do not think that the statutory requirements for the exemption need to be further clarified in the proposed rule. Terms like "general account" are well established, generally accepted and understood, at least in the United States insurance market.
133. Yes, the proposed rule appropriately and clearly defines a general account. However, please see my comments above.
134. For purposes of the exemption, the insurance company investment laws, regulations, and written guidance of States, particularly those that have extensively adopted the National Association of Insurance Commissioners model laws, are generally sufficient to protect the safety and soundness of the banking entity, and the financial stability of the United States.
135. The proposed rule's implementation of the exemption should ideally have minimal impact on the "normal" insurance activities of insurance companies affiliated with banking entities.
302. The proposed rule's implementation of exemptions for BOLI investments pursuant to section 13(d)(1)(J) of the BHC Act is effective.

Yours faithfully

Chris Barnard