

Brussels, 13 February 2012

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Subject: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Dear Sir/Madam,

The European Banking Federation welcomes the opportunity to comment on the joint notice of proposed rulemaking implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, otherwise known as the “Volcker Rule”. The European Banking Federation (EBF) is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Many European banks have banking and/or securities operations in the U.S. and would therefore be subject to (a) restrictions on proprietary trading and (b) restrictions from sponsoring, acquiring, or retaining interests in hedge funds and private equity funds under the Volcker Rule.)

The EBF would like to share two initial considerations. First, we are of the opinion that the Volcker Rule is likely to have detrimental effects on market liquidity and will make raising capital harder, both in the U.S. and abroad. The Volcker Rule will generally impair the ability of banks to make markets in their clients’ bonds. We would like to know whether the impact of the Volcker Rule in global capital markets has been properly and fully assessed. Secondly, we would like to point out that proprietary trading was not endorsed by the G20 leaders in Pittsburgh as an area of the financial system that required reform.

As a member of the Institute of International Bankers (IIB), we support the various submissions made by the IIB in respect of the Volcker Rule. The European banking industry has committed, and continues to commit, significant time and effort in order to better understand the Volcker Rule proposal, and the issues it presents. We would like to share the significant concerns of our members regarding the extraterritorial application of the Volcker Rule.

It is the position of the EBF that the **Volcker Rule’s extraterritorial application to global non-U.S. operations of non-U.S. banks should be reconsidered**. This view is shaped by the very real possibility that the application of the Volcker Rule as currently proposed would interfere with the rights of non-U.S. jurisdictions to regulate and supervise their banks. This could lead to an unintended reduction in much needed international cooperation amongst supervisory authorities, a situation which would inevitably lead to greater regulatory divergence.

We would therefore suggest the following:

1. The Volcker Rule generally prohibits banking entities from (a) engaging in proprietary trading or (b) sponsoring, or acquiring, or retaining an ownership interest in a private equity fund, or a hedge fund. The Volcker Rule contains certain exemptions. Notably, proprietary trading and fund investment activities that take place “solely outside the U.S.” on the grounds that the rule’s focus is on financial stability of the United States and protecting the U.S. taxpayer. However, the exemptions proposed are inconsistent with the original intention. In fact, the scope of the Volcker Rule has been expanded to cover a broad range of non-U.S. trading and fund activities over which Congress did not intend to extend U.S. jurisdiction. Further, the envisaged compliance requirements are unduly burdensome, as they require foreign banks to report on activity on a worldwide basis, even if such activities do not affect the U.S. We, therefore, urge the Agencies to **amend this exemption in order to avoid any inappropriate extraterritorial application of the Volcker Rule**, and to ensure that the exemption is in line with policymaker’s original intentions.
2. The U.S. **government securities exemption from the prohibition on proprietary trading** should be **broadened to cover EU member state government securities** (and non-U.S. government securities more generally) in order to avoid discriminatory treatment of such securities. The exemption proposed has the potential to adversely affect the liquidity and pricing of EU and other countries’ sovereign debt. Reducing liquidity in these non-U.S. markets can only generate systemic risk in global financial markets, to the detriment of the U.S. market.
3. The **"Super 23A" requirement**, as proposed in the Volcker Rule, would impose a worldwide prohibition against any non-U.S. bank lending to or otherwise transacting with any hedge funds or private-equity funds it sponsors, manages or advises, even when such funds bear no relation to the U.S. This requirement is **unduly broad and extraterritorial in reach**. We urge the Agencies to narrow the scope of Super 23A’s application in order to avoid intruding on business that is solely outside the U.S. Also (non U.S.) securitisations will probably be hampered by the Volcker rule because securitisation vehicles could be seen as covered funds. As a result, covered transactions like liquidity and credit support or support letters of credit (L/C) by non U.S. banks to these vehicles would not be possible.
4. The **definitions of “covered funds”, “foreign equivalent funds” “banking entity” and what constitutes “control” should be changed**, so as to avoid any inadvertent discriminations, such as the inclusion of Undertakings for Collective Investment in Transferable Securities (UCITS) funds or any other (regulated) European funds that do not exhibit the characteristics of a hedge fund or private-equity fund and inconsistencies, such as

compelling a banking entity with a stake of 25% in another one to file confidential information to which it probably has no way to access as a result of lacking effective control. We also recommend explicitly excluding covered funds and securitizations from the definition of “banking entity”, as this would have harmful and probably unintended consequences.

5. The Volcker Rule includes further restrictions on banking activities that even if permissible pursuant to an exemption would impose high risk exposures, material conflicts of interest, or threaten the safety and soundness of the banking entity or the financial stability of the U.S. (collectively, the “Prudential Backstops”). The Prudential Backstops should be explicitly limited in application to the U.S. operations of non-U.S. banks. The **overarching “backstop” of safety and soundness should be left in the foreign bank’s home country regulator’s hands**. Such regulator is in the best position to regulate its own banks.

Finally, we would like to point out that previous concerns over the extraterritorial application of banking and securities legislation in the context of the U.S.-EU economic and commercial relationship have often been addressed with success through bilateral discussions, whether via long standing forums such as the EU-U.S. Financial Markets Regulatory Dialogue on financial services, or ad hoc arrangements such as the EU-U.S. technical working group on derivatives regulation. It is important that U.S. regulators trust in the regulations developed by their foreign counterparts and do not seek to impose their requirements unnecessarily or inappropriately. Against the background of its regular contacts with the European institutions, the **EBF will, therefore, invite the European Commission to request the arrangement of a more structured dialogue with you to resolve the remaining questions and serious and significant issues posed by the Volcker Rule.**

Yours sincerely,



Guido Ravoet

cc:

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