



FEDERATION
BANCAIRE
FRANCAISE

The Director General delegate

Paris, 13 February 2012

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

Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20520

Office of the Comptroller of the Currency
250 E Street, SW
Mail stop 2-3,
Washington, DC 20219

Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20551

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

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

Together, the "**Agencies**"

Subject: Agencies consultation on Restrictions on Propriety Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds ; 76 Federal Register 68846 ; November 7, 2011; Joint Notice and Request for Comment OCC: Docket ID OCC-2011-14; FRB: Docket No. R-1432 and RIN 7100 AD 82; FDIC: RIN 3064-AD85; SEC: File Number S7-41-11

Dear Ladies and Gentlemen,

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and service 48 million customers.

The FBF welcomes the opportunity given by the Agencies to comment on the Notice of Proposed Rule Making implementing section 619 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the "*Dodd Frank Act*"), commonly referred as the "*Volcker Rule*".

As international global financial players, French credit institutions will be directly and significantly affected by the proposed Volcker Rule.

The main objective of this letter is to draw the attention of the Agencies to the extraterritorial effects of the Volcker Rule which we assume were unintended by the Agencies and the U.S. Congress.

As a member of the European Banking Federation (EBF), the FBF supports the separate comment letters submitted by the latter.

The general aim of the Volcker Rule is to prohibit banking entities, including international banks with certain types of operations in the U.S., from:

- Engaging in proprietary trading, or
- Sponsoring, or acquiring or retaining an ownership interest in, a "private equity fund" or a "hedge fund" ("*Covered Funds*"), in each case subject to certain exemptions.

The U.S. Congress clearly limited the extraterritorial scope of the Volcker Rule in recognizing the ability of international banks to engage in proprietary trading and the sponsoring and investing in Covered Funds, pursuant to BHCA Sections 4(c)(9) and 4(c)(13) solely outside of the United States.

Such limitation of the Volcker Rule's territorial scope is consistent with the objectives of the rule, which is aimed at protecting U.S. banks, U.S. financial stability and U.S. taxpayer funds. In addition, this limit is consistent with longstanding principles of international banking supervision, reflected in U.S. law, rulemaking, and interpretation promulgated by the federal banking agencies. These principles limit the extraterritorial application of U.S. banking laws and accord appropriate deference to home country regulators.

Contrary to these longstanding principles, major French banks, by virtue of having banking and securities operations in the United States, would be subject to the Volcker Rules restrictions and compliance obligations on a global basis.

In light of the concerns expressed by our members, the FBF urge the agencies to consider the following:

- ❖ The Volcker Rule exempts prohibited proprietary trading and fund investment activities "solely outside the U.S.". The scope of the Agencies' proposal in this respect, however, has been extended to cover a much wider range of non-U.S. trading and fund activities than the U.S. Congress intended. For example, the proposed rule appears to require non-U.S. entities to institute detailed and complex compliance regimes. It also prohibits certain transactions between a non-U.S. banking entity and non-U.S. funds sponsor by such entity. For those reasons, the FBF urges the Agencies to amend the exemption.
- ❖ The proposed exemption from the proprietary trading ban applicable to US government securities should be expanded in order to cover non-US government securities. As currently proposed, the exemption could adversely affect the liquidity and pricing of all non-U.S. sovereign debt.
- ❖ The scope of the "Super 23A" provision should be narrowed in order to avoid intruding on business that is carried out solely outside the U.S. The scope of the existing section 23A of the Federal Reserve Act applies only to (1) U.S. depository institutions that benefit from deposit insurance backed by the full faith and credit of the U.S. government, and (2) is applied to foreign banking organizations only with respect to transactions between the foreign banking organization's U.S. branches and agencies and certain U.S. covered affiliates, e.g. U.S. broker dealers, insurance companies, portfolio companies held pursuant to the merchant banking rules. The proposed extraterritorial expansion of the affiliate transaction restrictions to entities that do not benefit from the federal safety net is inconsistent with the existing legal framework and the logic supporting that framework.

- ❖ With respect to the prime brokerage exemption from Super 23A, we believe that normal custody and settlement services for Covered Funds, to the extent they may be deemed to constitute provisional credit or liquidity for securities settlement, contractual settlement, pre-determined income or other banking custody-related transactions, should not be considered "covered transactions" for the purposes of Super 23A given that these specific transactions, by their very nature, do not raise a risk of undue credit support for sponsored and advised funds. For this reason, we urge the Agencies to exclude custody and settlement arrangements from the definition of "covered transactions".¹
- ❖ The Volcker Rule contains an exemption for U.S. mutual funds. We strongly suggest expanding this exemption to include similarly structured non-U.S. funds (e.g., European "UCITS"²) to ensure a level playing field vis-à-vis U.S. investors since these funds do not pose the risk of traditional "hedge funds" or "private equity funds". In this respect, it should be made clear that any such non-U.S. funds are not included in the scope of Covered Funds.
- ❖ The Volcker Rule includes further restrictions on banking activities that even if permissible pursuant to an exemption would impose material 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.³

The FBF thanks the Agencies for taking into consideration its comments.

Yours faithfully,



Pierre de Lauzun

¹ See the Association Française des Professionnels des Titres ("AFTI") contribution to the Agencies' consultation.

² Undertakings for Collective Investment in Transferable Securities (UCITS) regulated by UCITS European Directive.

³ See the European Banking Federation (EBF) contribution to this consultation.