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February 13, 2012

Office of the Comptroller of the Currency
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Mail Stop 2–3
Washington, DC 20219
regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@fdic.gov

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090
rulecomments@sec.gov

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships with Hedge Funds and Private Equity Funds. (**OCC**: Docket ID OCC-2011-14; **FRS**: Docket No. R-1432 and RIN 7100 AD82; **FDIC**: RIN 3064-AD85; **SEC**: File Number S7-41-11)

Ladies and Gentlemen:

United Services Automobile Association (USAA) is pleased to offer input on the proposed regulations[1] promulgated by the Officer of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation and the Securities and Exchange Commission (collectively the Agencies) regarding the implementation of the so called "Volcker Rule" contained in Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

USAA is a membership-based association, which together with its family of companies, serves present and former commissioned and noncommissioned U.S. military officers, enlisted personnel, retired military, and their families. Since USAA's inception in 1922 by a group of U.S. Army officers, we have pursued a mission of facilitating the financial security of our members and their families by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking, and investment products. Our core values of service, honesty, loyalty, and integrity have enabled us to perform consistently and be a source of stability for our members, even in the midst of the unprecedented financial crisis of recent years.

[1] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Notice of Proposed Rulemaking, 76 Fed. Reg. 68846 (November 7, 2011).

In a letter dated November 5, 2010[2], USAA provided comments to the Financial Stability Oversight Council in response to the request for public input[3] for its study regarding the Volcker Rule. We appreciate the Agencies' review of our letter. The proposed regulations appear to largely satisfy our concerns, with the exception of investment by insurance subsidiaries, which is addressed in Part B below.

In response to the proposed regulations, we are aware that the Agencies have received comment letters that argue that the Volcker Rule's so-called "insurance exemption" applies to both the proprietary trading restrictions (Subpart B of the proposed regulations) and also to the investment restrictions (Subpart C of the proposed regulation). We concur with this assessment and support the related changes to the regulations espoused by these comment letters. We submit this separate letter to address investments in covered funds (Part A), real estate investment vehicles (Part B), state tax credit programs (Part C) and by non-profit foundations sponsored by banking entities (Part D).

A. Apply the insurance exemption to investment in covered funds (Question 135).

Section 13(d)(1)(F) of the Volcker Rule essentially states that, in spite of the prohibitions on proprietary trading and investment in private equity and hedge funds, insurance companies may transact in *any security*, provided that the transaction is solely for the general account of the regulated insurance company (the "insurance exemption"). Interests in private equity and hedge funds (which the proposed regulation has termed "covered funds") are "securities"[4] and, therefore, clearly fall under the plain language of the insurance exemption. The fact that the phrase "any security" is found by cross reference to the definition of proprietary trading in Section 13(h)(4) should not limit the insurance exemption to only proprietary trading. Therefore, the covered funds prohibition in Subpart C, Section __.10(a) of the proposed regulation should reflect that investment in private equity and hedge funds by insurance companies for the general account is a permitted activity under Section 13(d)(1)(F) of the Volcker Rule.

This interpretation is not only consistent with the language of the statute itself, but is also in harmony with the Volcker Rule mandate that the Financial Stability Oversight Council (FSOC) conduct a study and make recommendations on implementing the Volcker Rule so as to "appropriately accommodate the business of insurance." Thus, the Volcker Rule explicitly supports a regulatory regime that accommodates, rather than limits, the business of insurance—a key element of which is investing premiums paid by policyholders to pay future claims and related expenses. In its study, the FSOC recognized that this investment activity is a central component of the insurance business and that application of the Volcker Rule could be unduly disruptive to the insurance industry.[5]

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[2] Letter from Steven Alan Bennett, General Counsel, USAA, to Financial Stability Oversight Council, Department of Treasury (November 5, 2010), *available at http://www.regulations.gov/#!documentDetail;D=FSOC-2010-0002-1364.*

[3] Public Input for the Study Regarding the Implementation of the Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds; Notice and Request for Information 75 Fed. Reg. 61758 (October 6, 2010).

[4] *See* 15 U.S.C. 77b(a)(1).

[5] *Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds,* Financial Stability Oversight Council, January 2011 at 71.

Moreover, one key objective of the Volcker Rule was to promote the safety and soundness of banking entities and U.S. financial stability. Prohibiting insurance company investment in covered funds does not further this objective. Unlike investments by banks, insurance company investment in covered funds is already subject to strict limitations contained in state insurance investment statutes and oversight by state insurance regulators. Those state restrictions govern the types of covered fund investments insurance companies can make, as well as the quantity of investments in covered funds available to insurance companies. As such, there are protections in place to ensure that the investments are prudent and serve to diversify the insurance company investment portfolio without creating inappropriate risk for the solvency of the insurance company. In addition, covered funds constitute important investment vehicles for insurance companies, providing diversification and relatively higher rates of return that enable insurance companies, like USAA, to maintain affordable premiums and pay dividends to our members – the men and women of the U.S. military and their families.

Insurance companies strive to keep the cost of insurance low for customers by, among other things, investing premium dollars in diverse, conservative, stable investment vehicles as permitted by state law. Unnecessarily limiting investment opportunities will impair the ability of insurance companies to adapt to changing market conditions and could result in increases in insurance premiums. In addition, prohibiting certain insurance companies (i.e., those that meet the definition of banking entity in the proposed regulation because they happen to be affiliated with banks) from accessing certain investment opportunities would create a competitive imbalance within the insurance industry. An insurance company with the flexibility to access additional prudent diversification opportunities with their accompanying higher rates of return can offer lower premiums and, as a result, attract a greater market share. Strong insurance operations have a positive impact on not only the insurer but also the depository institution it supports. We therefore urge the Agencies to put all insurance companies on a level playing field by applying the insurance exemption to the covered funds prohibition in Section __.10(a).

B. Clarify that an investment "solely" for the general account of the insurance company includes investments through affiliated real estate investment vehicles to benefit the general account (Question 132).

Section __.6(c)(2) of the proposed regulation provides that the prohibition on proprietary trading does not apply to the purchase or sale of a covered financial position by an insurance company nor by any affiliate if it is made "solely for the general account of the insurance company." The Volcker Rule calls for the proposed regulations to accommodate the business of insurance and expressly permits an investment if it is conducted in compliance with insurance company investment laws.

USAA is regulated by the Texas Department of Insurance, which governs and regulates USAA's investments. In compliance with Texas insurance investment laws, as part of its investment strategy, USAA invests a portion of its insurance portfolio in commercial real estate – sometimes directly and sometimes through affiliated real estate investment vehicles. Such structures allow USAA to invest in diversified asset classes while prudently managing risks and protecting the assets of the insurance company.

Such investments in real estate investment vehicles neither affect the depository institution nor create additional regulatory risks; therefore, the Volcker Rule should not be implicated. We request that the Agencies clarify that an insurance company's direct or indirect investment in an affiliate, which in turn invests in real estate, as permitted by state insurance laws, does not run afoul of the "solely for the general account" language in Section __.6(c)(2) of the proposed regulations. And, as discussed in Part A above, we request that the Agencies clarify that the insurance exemption extends to real estate investment vehicles that may otherwise meet the definition of covered funds (Subpart C of the proposed regulation).

C. The Small Business Investment Companies (SBIC), public welfare and qualified rehabilitation investment exemptions for acquiring or retaining an ownership interest in a covered fund are too narrow (Questions 276-280).

Section __.13(a)(1) of the proposed rule purports to exempt (i) investments in support of SBIC, (ii) "public welfare" investments that impact low to moderate income families, housing and communities and (iii) qualified rehabilitation expenditure with respect to a qualified rehabilitation building or certified historic structure from the prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund found in the Volcker Rule. We believe these limited exemptions are too narrow. Many states have developed statutes that authorize tax credits (*e.g.*, tax credits against state premium taxes paid by insurance companies) for investment in various programs that support a state identified public welfare purpose.[6] The public welfare purposes chosen by the states are not limited to rule §__.13(a)(1) investments (SBIC, low income public welfare or qualified rehabilitation investments), but also include other investments such as renewable energy development, high technology innovation and urban redevelopment. Many of these state supported programs qualify for federal tax credits as well.

These state tax credit investments are beneficial not only because they provide an attractive return on a relatively low-risk investment by providing a credit against taxes owed, but also because they support various public welfare initiatives of the states. In short, there is no meaningful distinction between these other kinds of state supported public welfare investments and the identified rule §__.13(a)(1) investments (SBIC, low income public welfare or qualified rehabilitation investments). Thus, the exemption should be expanded to include all such investments. We propose expansion of the exemption in §__.13(a)(1) to allow investment by a banking entity in any state promulgated tax credit program. Please note that applying the insurance exemption to investments in covered funds, as contemplated by the Volcker Rule, would also allow for insurance company investment in such tax credit programs.

D. Private foundations should not be included within the definition of banking entity (Question 6).

USAA sponsors The USAA Foundation and The USAA Educational Foundation, two non-profit organizations. The USAA Foundation's purpose is to improve communities by contributing to other qualified nonprofit organizations that provide programs for various areas of public welfare including education, health and human services, medical research and support of the military.

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[6] *See, e.g., Hawaii Revised Statutes, §235-110.9, 241-4.8 and 431:7-209, Fla. Stat. §288.991 et seq. and NCGS §105-129.15 et seq.*

The mission of The USAA Educational Foundation is to help consumers make informed decisions by providing information on financial management, safety concerns and significant life events. The primary programs offered by The USAA Educational Foundation are a publications library, educational videos, and a Financial Management Presentation offered to ROTC cadets and military audiences. All publications are provided to consumers free of cost. Neither The USAA Foundation nor The USAA Educational Foundation endorses or promotes *any* commercial supplier, product or service.

The definition of "affiliate" in §2(1) of the Dodd Frank Act is so broad that non-profit private foundations sponsored by a banking entity, as defined in the Volcker Rule, could be misconstrued as coming within the scope of the Volcker Rule and its restrictions. This interpretation has unintended results and is inconsistent with the purpose of the statute. The Volcker Rule's restrictions against proprietary trading and investing in covered funds should not apply to private foundations, regardless of whether they are sponsored by a banking entity. The sole purpose of these foundations is to promote the public welfare. Further to that purpose, strict IRS rules pursuant to Section 501(c) of the Internal Revenue Code of 1986 (as amended) prohibit any financial benefit of the foundation from inuring to the sponsoring bank entity as a condition to tax exemption[7]. Moreover, the IRS has well established rules that prohibit investments by a foundation that unreasonably jeopardize the assets of the fund[8]. Due to unprecedented low returns on traditional investments (e.g., stocks and bonds), alternative assets are rapidly becoming a significant portion of many foundations' long term investment strategies. Funds that meet the definition of covered funds are a common vehicle for investing in this class of assets. If Volcker Rule restrictions were to apply to private foundations, they would be hampered or prevented from investing in covered funds, thereby reducing overall returns for such foundations and decreasing the amount of contributions foundations could make to promote public welfare. Therefore, non-profit private foundations should be clearly excluded from the definition of "affiliate" for purposes of the Volcker Rule.

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USAA recognizes the tremendous effort that went into drafting the proposed regulations and is pleased to have the opportunity to provide comments. We appreciate the Agencies' consideration of our comments and look forward to working with the Agencies on issues related to the Volcker Rule and other components of the Dodd-Frank Act. Should you have questions or wish further clarification on our comments, please contact Ken Smith, Corporate Finance and Governance Counsel, at 210-498-0616.

Sincerely,

Steven Alan Bennett
Executive Vice President
General Counsel & Corporate Secretary

[7] Internal Revenue Code (I.R.C.) § 4941; Treas. Reg. § 53.4941(a)-1 et seq.
[8] I.R.C. § 4944; Treas. Reg. § 53.4944-1 et seq.