NIXON PEABODY LLP
ATTORNEYS AT LAW

401 9th Street N.W.
Suite 900
Washington, DC 20004-2128
(202) 585-8000
Fax: (202) 585-8080

February 13, 2012

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corp.
550 17th Street, N.W.
Washington, D.C. 20429
Attn: Comments
Federal Deposit Insurance Corp.

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581

(collectively, the "Agencies")

Re: Restrictions on Proprietary Trading and Certain Interests in Relationships with Hedge Funds in Private Equity Funds
Docket ID OCC-2011-14 (for OCC)
Docket No. R-1432, RIN 7100 AD 82 (Federal Reserve System)
Docket No. RIN 7100 AD 82 (FDIC)
File No. S7-41-11 (SEC)

Ladies and Gentlemen:

These comments are provided on behalf of PNC Bank, National Association, Wilmington, Delaware, and Royal Bank of Canada, Toronto, Canada (collectively, the "Banks") in response to the request for comments on a proposal (the "Proposed Rules")[1] with respect to

[1] 76 Fed. Reg. 68846 (November 7, 2011). The original comment period for the Proposed Rules closed on January 13, 2012. The Agencies extended the comment period until February 13, 2012 (77 Fed. Reg. 23 (January 3, 2012)).

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2] The Banks, either directly or through subsidiaries, have been active over many years in supporting programs related to affordable housing and community and economic development. The Banks have supported these initiatives through a broad array of lending, investment and related programs, including extensive participation as investors in and sponsors of Low Income Housing Tax Credit ("LIHTC") and New Markets Tax Credit ("NMTC") funds. Throughout the period that Section 619 of the Dodd-Frank Act was under consideration, the Banks urged Congress to adopt language to protect the ability of banking entities to continue LIHTC and NMTC activities using highly successful models developed over a number of years.[3]

The LIHTC model is an example of the type of investment used by banking entities to support affordable housing and community and economic development. LIHTC, which was created by the Tax Reform Act of 1986 (Public Law 99-5140), has financed nearly two million low-income apartment homes. The LIHTC is available to owners of rental housing developments that are occupied principally or entirely by low-income households, *i.e.,* where the households have incomes that do not exceed 60% of the area median income in the location of the properties and where the households pay restricted rents typically below comparable market rents. The LIHTC program has become the principal federal program for both the development of and preservation of affordable rental housing, attracting an annual investment of eight to nine billion dollars in private investment, producing nearly 130,000 family affordable rental units. The U.S. Treasury Department commissioned a study performed by Harvard University that described the LIHTC programs as ". . . the most successful affordable housing production and preservation program in the nation's history."[4]

<u>The Proposed Rules' Implementation of the Public Welfare Fund Exemption from the Volcker Rule Prohibition on Investing in Covered Funds</u>

Section 619 of the Dodd-Frank Act[5], popularly known as the "Volcker Rule," generally prohibits any banking entity such as a bank, its holding company or any affiliate or subsidiary of

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[2] Public Law 111-203, 124 Stat. 1376 (2010).

[3] The Banks also submitted extensive comments on this subject to the Financial Stability Oversight Council ("FSOC") in connection with its solicitation of comments on a study of § 619 of the Dodd-Frank Act. That letter is attached as Annex A.

[4] "The Disruption of the Low-Income Housing Tax Credit Program: Causes, Consequences, Responses and Proposed Correctives," Joint Center for Housing Studies of Harvard University, December 2009.

[5] Section 619 is codified under the Bank Holding Company Act of 1956, as amended, at 12 U.S.C. § 1851.

a bank or its holding company (collectively defined as "banking entities" in the Volcker Rule), as well as nonbank financial companies supervised by the Board of Governors of the Federal Reserve System (the "Board") from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring or having certain relationships with, a hedge fund or a private equity fund ("covered funds"). The prohibition with respect to fund ownership is subject to certain exemptions, including an exemption for making fund investments that are designed to promote the public welfare.[6]

The statutory provisions related to covered funds are implemented under Subpart C of the Proposed Rules. The general prohibition on acquiring or retaining an ownership interest in a covered fund is set forth at §__.10 of the Proposed Rules, while §__.13 of the Proposed Rules implements the exemption for funds that are designed to promote the public welfare, as well as for small business investment companies ("SBICs") and investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building.

We have reviewed the Proposed Rules at §__.13 and the related language in the preamble to the rules. The language in §__.13, which now includes the phrase "acting as a sponsor to," makes clear that banking entities may both invest in and sponsor LIHTC and NMTC funds. We believe that the addition of the language regarding sponsorship of these types of funds is consistent with the statutory intent of the public welfare fund exemption, and will permit banking organizations to continue to play this important role with respect to public welfare funds. **Accordingly, we are very pleased to note that the Proposed Rules, both in the preamble and in the Proposed Rules themselves, provide that banking entities, their affiliates and their subsidiaries, may both invest in <u>and</u> sponsor covered funds for public welfare purposes, and we urge adoption of these provisions as proposed.**

<u>Public Welfare Funds Should Not Be Considered "Banking Entities"</u>

In order to ensure that the exemption for public welfare funds is not unintentionally restricted by other provisions of the Proposed Rules, we believe that the Proposed Rules should be modified to provide that a public welfare fund permissibly controlled by a banking entity will

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6 Under Section 619(d)(1)(E), a banking entity is permitted to make 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), <u>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)</u>, 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." (Emphasis added.)

not itself be considered a "banking entity." As the Agencies recognized in the preamble to the Proposed Rules, the definition of a "banking entity":

> "could include a covered fund that a banking entity has permissibly sponsored or made an investment in because, for example, the banking entity acts as general partner or managing member of the covered fund as part of its permitted sponsorship activities. If such a covered fund were considered a 'banking entity' for purposes of the proposed rule, the fund itself would become subject to all of the restrictions and limitations of [the Volcker Rule] and the proposed rule, which would be inconsistent with the purpose and intent of the statute." [7]

To avoid this result, the preamble indicates that "the proposed rule would exclude from the definition of banking entity any fund that a banking entity may invest in or sponsor as permitted by the proposed rule."[8] However, the rule text excludes from the definition of "banking entity" only those covered funds that are owned or controlled under the so-called "asset management exception" in §__.11 of the Proposed Rules." See Proposed Rules at §__.2(e)(4)(i).

Pursuant to §__.2(e)(4), a banking entity includes any affiliate of a bank or its holding company other than "a covered fund that is organized, offered and held by a banking entity pursuant to §__.11 and in accordance with the provisions of Subpart C of this part, including the provisions governing relationships between a covered fund and a banking entity."[9] Section __.11 of the Proposed Rules implements the permitted activity exemption provided for asset management set forth in section 13(d)(1)(G) of the Volcker Rule, which authorizes banking entities to organize and offer, or sponsor a covered fund and to make a *de minimis* con-investment in such fund, subject to certain conditions.

Unlike a fund subject to the asset management exemption, however, a fund that is exempted from the investment and sponsorship restrictions pursuant to §__.13 could (unless the approach suggested in the preamble excluding funds in which a banking entity may make permitted investments is included in the final ruling) be deemed to be a banking entity and subject to the all of the restrictions on banking entities, including the prohibitions on investing in and sponsoring funds. We do not believe that this result was intended by Congress or, in light of the language in the preamble, by the Agencies.

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[7] See 76 Fed. Reg. at 68855-56.

[8] See *id.* at 68856.

[9] 76 Fed. Reg. at 68950-68951.

The Proposed Rules should be amended to incorporate the intent of the Agencies as reflected in the preamble, as well as the intent of Congress, by clarifying that public welfare funds sponsored or otherwise controlled by a banking entity will not themselves be considered a "banking entity."

Covered Fund Thresholds for Compliance with Appendix C Should Exclude Public Welfare Funds

Under the Proposed Rules, a banking entity would be required to comply with the extensive "programmatic" compliance requirements in Appendix C if, with respect to covered funds:

- The banking entity invests in or has relationships with covered funds and either—
  - Has, together with its affiliates and subsidiaries, aggregate covered fund investments the average value of which (as measured on a 4-quarter rolling basis) is $1 billion or more; or
  - Sponsors and advises, together with its subsidiaries and affiliates, covered funds the average total assets of which (as measured on a 4-quarter rolling basis) are $1 billion or more.[10]

We believe that the $1 billion thresholds on covered fund investments and assets in §__.20(c)(2)(ii) should not include the amount of investments in, or assets of, funds that are designed primarily to promote the public welfare of the type permitted by 12 U.S.C. § 24 (Eleventh), such as LIHTC and NMTC funds.

Investments in, and sponsorship of, these types of funds is permitted[11] by the Volcker Rule precisely because of the substantial public benefits associated with these types of investments and funds. As discussed above, funds that are designed primarily to promote the public welfare provide financial support for, among other things, affordable housing for low- and moderate-income individuals, small businesses that are located in low- and moderate-income areas or areas targeted for redevelopment, and community development financial institutions.[12]

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[10] Proposed Rules at §__.20(c). Under the Proposed Rules, the appropriate agency for a banking entity could also require a banking entity to comply with Appendix C even if the entity did not meet these thresholds.

[11] See 12 U.S.C. § 1851(d)(1)(E); Proposed Rules at §__.13(a).

[12] See 12 C.F.R. § 24.6.

Including these investments and funds in the dollar thresholds that trigger the programmatic compliance requirements of Appendix C, however, provides banking entities a disincentive to invest in, or sponsor public welfare funds (as well as SBICs or Historic Tax Credit funds) if doing so could cause the organization to become subject to these extensive requirements. We believe such a result would be inconsistent with the purposes of the statutory exemptions for these types of funds.

Responses to Questions

Set forth below are our responses to the Questions that relate to the matters discussed above.

Question 7.

Is the proposed rule's exclusion of a covered fund that is organized, offered and held by a banking entity from the definition of banking entity effective? Should the definition of banking entity be modified to exclude any covered fund? Why or why not?

For the reasons discussed above, we believe that the Proposed Rules' exclusion of a covered fund that is organized, offered and held by a banking entity from the definition of banking entity does not achieve the objective set forth in the preamble and is therefore not effective. We believe the exclusion needs to be extended beyond funds held under the asset management exception, to include, at a minimum, public welfare funds, as discussed above.

Our response to questions regarding public welfare investments that were posed in the Proposed Rules appear below.

Question 276.

Is the proposed rule's approach to implementing the SBIC, public welfare and qualified rehabilitation investment exemption for acquiring or retaining an ownership interest in a covered fund effective? If not, what alternative approach would be more effective?

If clarified as proposed above, we strongly believe that the Proposed Rules' approach to the public welfare exemption will be effective. This is particularly so in light of the language that clearly states that both investment and sponsorship of a covered fund are permitted if the investment meets the public welfare test in 12 U.S.C. § 24. Since both LIHTC funds and NMTC funds are referenced in the OCC's regulations as permissible public welfare investments, we believe that the approach taken should be effective and raise no meaningful impediments to the ability of banks to continue to engage in activities as investor or sponsor that qualify as public welfare activities for both affordable rental housing under LIHTC and jobs and community development under the NMTC.

Question 277.

Should the approach include other elements? If so, what elements and why? Should any of the proposed elements be revised or eliminated? If so, why and how?

See our comments above. We believe that public welfare funds sponsored or controlled by a banking entity should not themselves be considered a "banking entity."

Question 278.

Should the proposed rule permit a banking entity to sponsor an SBIC and other identified public interest investments? Why or why not? Does the Agencies' determination under section 13(d)(1)(J) of the BHC Act regarding sponsoring of an SBIC, public welfare or qualified rehabilitation investment effectively promote and protect the safety and soundness of banking entities and the financial stability of the United States? If not, why not?

We strongly concur that a banking entity should be permitted to sponsor a public welfare fund, and have previously provided our views on this subject in a letter dated November 4, 2010 to the Financial Stability Oversight Council ("FSOC") (the "FSOC Letter"). See Appendix A to this letter.

Question 279.

What would the effect of the proposed rule be on a banking entity's ability to sponsor and syndicate funds supported by public welfare investments or low income housing tax credits which are utilized to assist banks and other insured depository institutions with meeting with Community Reinvestment Act ("CRA") obligations?

As we stated in the FSOC Letter, the LIHTC has been one of the most successful housing programs of the past 25 years and has enabled both large banks (as sponsors and investors) and smaller banks (as investors) to provide billions of dollars of affordable rental housing each year. We urge that no action be taken that would create impediments to this highly successful program.

Question 280.

Does the proposed rule unduly constrain a banking entity's ability to meet the convenience and needs of the community through CRA or other public welfare investments or services? If so, why and how could the proposed rule be revised to address this concern?

As drafted, the rule should not impede the ability of the Banks to continue to participate in LIHTC and NMTC structures and to provide the level of support to these programs that it has in the past. These structures have and will enable the Banks to continue to meet the convenience and needs of the community.

Question 320.

Is the proposed application of §__.20's compliance program requirement to all banking entities engaged in covered trading activity or covered trading investments and activities and the minimum standards of proposed Appendix C to only banking entities with significant covered trading or covered fund activities, effective? If not, what alternative would be more effective? Should proposed Appendix C apply to all banking entities? If so, why? Are the thresholds proposed for determining whether a banking entity must comply with proposed Appendix C appropriate? If not, what alternative would be more effective?

As discussed above, the thresholds proposed for determining whether a banking entity must comply with Appendix C should not include the amount of investments in, or assets of, funds that are designed primarily to promote the public welfare of the type permitted by 12 U.S.C. § 24 (Eleventh), such as LIHTC and NMTC funds.

* * *

We appreciate the opportunity to comment. If you have any questions, or require additional information, please contact either Raymond J. Gustini, Esq. or Richard S. Goldstein, Esq., both of Nixon Peabody LLP. Mr. Gustini can be reached at 202-585-8725 (rgustini@nixonpeabody.com) and Mr. Goldstein can be reached at 202-585-8730 (rgoldstein@nixonpeabody.com). Thank you.

Respectfully submitted on behalf of
PNC Bank, National Association and
Royal Bank of Canada

By: Nixon Peabody LLP

Attachment

APPENDIX A

NIXON PEABODY LLP
ATTORNEYS AT LAW

401 9th Street N.W.
Suite 900
Washington, DC 20004-2128
(202) 585-8000
Fax: (202) 585-8080

November 4, 2010

Financial Stability Oversight Council
c/o United States Department of the Treasury
Office of Domestic Finance
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20020

Re: Docket Number FSOC-2010-002
Public Input for the Study Regarding the Implementation of the Prohibitions On Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

These comments are provided on behalf of PNC Bank, National Association and Royal Bank of Canada. These entities, either directly or through their respective subsidiaries, already are active in investment in and sponsorship of one or both types of tax credit funds discussed in this letter, and hope to continue and expand those activities in the future.

We appreciate the opportunity to submit comments to the Financial Stability Oversight Council ("FSOC") regarding its Notice and Request for Information with respect to the Volcker Rule, Section 619 of the Dodd-Frank Act of 2010 (the "Act") (Public Law 11-203, 124 Stat. 1376 (2010)). Our comments will be principally focused on a Low-Income Housing Tax Credit ("LIHTC") structure used by banks for more than twenty years in which the bank is a sponsor of a LIHTC fund. This practice may conflict with Section 619(a)(1)(B) of the Act. That section prohibits a banking entity from "sponsor[ing] a hedge fund or private equity fund." And while Section 619(d)(1)(E) permits banks to invest in funds "designed primarily to promote public welfare", there is no explicit exemption for banks to *sponsor* such funds. This limitation on sponsorship would also impact other bank-sponsored public welfare investments such as New Markets tax credits.

Under Section 619 of the Act, the FSOC is required to study and make recommendations to implement the Volcker Rule within six (6) months from enactment of the Act. The principal bank regulatory agencies and the SEC and CFTC will consider the findings of the FSOC in adopting applicable banking and SEC and CFTC regulations to implement the Volcker Rule. Accordingly, the FSOC study is an important gateway for dealing with a number of basic questions raised by the Volcker Rule, including those that may have been attributable to oversight or drafting error. In the solicitation of comments the FSOC has asked for public comments on policy questions that formed the basis for enacting the Volcker Rule. For example, it seeks comment on the safety and soundness of banking entities, how the Volcker Rule can protect taxpayers and enhance financial stability of insured depository institutions, limitations on the inappropriate transfer of federal subsidies from insured depository institutions to unregulated entities, and key factors and considerations with respect to restrictions on the ability of banking entities to "invest in or sponsor private equity or hedge funds and factors informing the definition of 'public welfare investments.'" All of these areas for study (except the discussion of the scope of the term public welfare) involve risk and use of insured funds in investment and trading activities. Because the area with which we are concerned is straightforward and involves the scope of the public welfare permitted activity, we believe it is possible for the FSOC to deal with this question in its initial findings in the study. Such early action will help banks to continue to sponsor such LIHTC funds because of the long lead time needed to create a fund, line up investors, identify project developers, and of course secure LIHTC credits. Without early clarification, the uncertainty which surrounds a longstanding traditional LIHTC structure will have a chilling effect on future projects. Thus, it is important that the problem be brought to the FSOC's attention at this early date and that the FSOC use the study recommendation to ensure that LIHTC funds sponsored by banks are not deemed to be a prohibited fund sponsorship by an insured depository institution.

Background

Over the past two decades since the creation of the LIHTC in the Tax Reform Act of 1986 (Public Law 99-5140), the LIHTC program has financed nearly two million low-income apartment homes. The statutory framework is contained in Section 42 of the Internal Revenue Code of 1986, as amended. The LIHTC is available to owners of rental housing developments which are occupied principally or entirely by low-income households, whose incomes do not exceed 60% of the area median income where the property is located and who pay restricted rents typically well below comparable market rents. Because rents are limited, there is generally little cash flow for distribution to the owners and the main investment objective for investors in LIHTC transactions is the receipt of low-income housing tax credits, which are a dollar-for-dollar reduction in the owner's federal income tax liability.

The LIHTC program has become the principal federal program for the development and preservation of affordable rental housing; it is present in well over 90% of all affordable rental housing transactions and a majority of all multifamily rental developments. Each year the LIHTC program results in up to eight or nine billion dollars of private investment to produce nearly 130,000 rental units that are affordable to low-income families. Until the recent credit crisis, financial institutions and Freddie Mac and Fannie Mae accounted for over 90 percent of the equity capital invested in the LIHTC program.

In a study commissioned by the Treasury Department and the Department of Housing and Urban Development (the "Harvard Study"), the Joint Center for Housing Studies at Harvard University* declared in December 2009 that the LIHTC program "is widely regarded as the most successful affordable housing production and preservation program in the nation's history." [Harvard Study at page 13].

Banks, typically those that are larger, have served as sponsors of LIHTC investment funds for many years. These LIHTC investment funds in turn invest as limited partners in other partnerships which own and develop affordable housing properties that have received an allocation of LIHTC from their state or local housing finance agency, which agencies are the principal administrators of the program, in conjunction with the Internal Revenue Service. In this fund structure, a large bank acts as fund sponsor (and also may be an investor) while other banks (including relatively small banks) and other accredited and sophisticated corporate entities participate as investors (see attached diagram). All of the participating investors receive LIHTC credit and the fund sponsor earns fees for the services which it performs. Bank-sponsored funds currently are estimated to account for approximately 30% to 35% of the total equity capital raised for investment in the LIHTC program, so a substantial portion of the affordable rental housing that is produced in the nation has resulted from bank-sponsored LIHTC investment funds.

In a LIHTC investment fund structure, the sponsor:

- organizes and serves as the general partner of the LIHTC investment fund (which is typically a limited partnership);
- solicits other accredited and sophisticated corporate investors, including other banks;
- selects properties which qualify for LIHTC and which have received an allocation of LIHTC from the state housing finance agency;
- structures and negotiates the acquisition of interests in the entity (the "property partnership") which owns the qualifying property;
- conducts extensive due diligence and underwriting with respect to the investment in the property partnership, including the qualification for LIHTC, the developer's experience and track record, the state of the local housing market,

* "The Disruption of the Low-Income Housing Tax Credit Program: Causes, Consequences, Responses and Proposed Correctives", Joint Center for Housing Studies of Harvard University, December 2009

environmental assessments, general real estate matters and other matters of relevance to the transaction; and

- after closing, conducts ongoing monitoring and asset management activities to assure the continuing qualification of the property for LIHTC.

The authority for bank investment in or investment sponsorship of a LIHTC fund arises out of the community development investment authority in 12 U.S.C. Section 24 (Eleventh) and parallel provisions for state chartered banks and thrift institutions. U.S. banking laws authorize banks to make investments primarily to promote the public welfare under the community development authority in 12 U.S.C. 24 (Eleventh). Under the statute and applicable regulations, a national bank may make public welfare investments directly or indirectly if the investments primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or if the investment would receive consideration under 12 C.F.R. § 25.23 (the "Community Reinvestment Act Regulations") as a "qualified investment" (See 12 C.F.R. § 24.3). Such investments may be made pursuant to prior approval from the applicable bank regulatory agency or in certain circumstances, pursuant to after-the-fact notice to the agency. The regulations and published guidance from the bank regulatory agencies is voluminous and fully supportive of investments in properties generating the LIHTC. The LIHTC program is a mature and successful program that is actively supported by federal bank regulatory agencies. There are specific references to LIHTC in the Community Reinvestment Act ("CRA") guidance that describe LIHTC as an acceptable investment under the CRA "Investment" test where the investment "benefits the bank's assessment area or provides benefits to a broader statewide or regional area."

Risk Mitigation Benefit

A longstanding and successful feature of the LIHTC program is that it has enabled many banks to become frequent users of LIHTC. In the LIHTC investment fund structures described above, large banks sponsor LIHTC investment funds in which they may invest and other banks and corporate entities participate as investors. The structure allowing large and small banks to participate is also an important risk mitigation tool for banks where large, complex real estate projects are involved. Whatever risks are involved can be shared among a number of bank and non-bank entities. In these cases smaller banks actively seek out experienced fund sponsors which can offer investments in properties in their assessment areas to enable them to participate on a basis which serves community needs but also fits the smaller bank's risk profile, particularly as to concentration limits.

Smaller banks and new investors are attracted to investing in LIHTC investment funds sponsored by larger, more experienced banks because of the confidence these investors have in the stability of those banks and the experience in real estate investment in general and LIHTC investments in particular. Without bank sponsorship, it is highly likely that smaller banks would find investments in LIHTC much less attractive and decrease their investments in such properties. Such a result would undermine the longstanding policy of encouraging bank participation in this highly successful program that serves the important national goal of producing and preserving affordable housing for low-income persons.

We also point out the following:

- There is no evidence that either bank sponsorship of LIHTC investment funds or investments by banks in the LIHTC program has had an adverse impact on the safety and soundness of banking entities. LIHTC investments are long-term and bear no resemblance to the kind of trading the Volcker Rule was designed to address. LIHTC fund sponsorships are not only conventional and real-estate related but also serve as a cornerstone of the nation's affordable housing policy. LIHTC fund sponsorship has also enabled banks to earn substantial fees and increase bank profitability through the dollar-for-dollar tax reduction benefits of the credit.
- The Harvard Study stated that: "Throughout the program's 23-year history, its default experience has been low by multifamily housing standards and extremely low relative to previous subsidy programs." [Harvard Study at page 2]. In light of this successful track record, banks have been able to realize projected benefits in the overwhelming number of cases and losses on these investments have been rare.
- There is no evidence that suggests that taxpayers and consumers are not protected or that financial stability is not enhanced by the continuation of the traditional LIHTC structure where banks play the role of sponsor.

If the Volcker Rule forces large banks out of sponsorship of LIHTC funds or significantly delays clarification, then smaller banks will also be affected and affordable housing will be negatively impacted. We do not believe that Congress intended this result when the Volcker Rule was enacted. In fact, Congress made an effort to protect affordable housing by specifically authorizing an exception to the Volcker Rule for certain permitted activities including "public welfare investment" by banks. As drafted and enacted it writes out of the Volcker Rule investments designed "primarily to promote the public welfare of the type permitted under paragraph (11) of the section 5136 of the Revised Statues of the United States (12 USC 24)." See Section 619(d)(1)(E) of the Act. We believe that this provision was intended to encompass all public welfare investment as it relates to LIHTC, including structures in which banks act as a sponsor. Indeed, although the risks in the LIHTC program are minimal, the risks are borne mainly by those who invest, and the Congress has determined that investment in LIHTC transactions is clearly sanctioned. It follows, therefore, that "sponsorship" by banks, an even lower risk activity that promotes the public welfare and assists other banks in meeting their Community Reinvestment Act and public welfare obligations should also be sanctioned. We believe that the Volcker Rule should be read to permit both types of activities: investing in

LIHTC properties and sponsoring funds that invest in LIHTC properties. Without clarification, the ambiguity now present in the Volcker Rule will have a negative impact on the national goal of providing affordable housing. We urge the FSOC to examine this provision and whether the term "public welfare investment" permits or should permit both LIHTC investment fund sponsorship and direct investment.

New Markets Tax Credit

The New Markets tax credit is also impacted by the limitation in the Volcker Rule that omits sponsorship from the permitted activities investment language in Section 619(d)(1)(E). New Markets tax credit transactions, like LIHTC, are specifically authorized as public welfare investments (12 C.F.R. § 24.6(c)(3)). The New Markets tax credit structure utilizes bank-sponsored funds with about the same frequency as LIHTC funds sponsored by banks. Unless bank-sponsored New Markets investments are also deemed to include bank fund sponsorship, a significant portion of New Markets investment and resulting benefits of targeted job creation and economic development will be lost.

Conclusion

We appreciate the opportunity to submit our comments and we hope to obtain FSOC's clarification at the earliest possible stage. Again we urge that the term "public welfare investments" in Section 619(d)(1)(E) of the Act be interpreted to mean the authority, as a permissible activity exception to the Volcker Rule, to continue the investment in and the sponsorship of LIHTC and New Markets tax credit funds. If you have any questions, or require additional information, please contact either Raymond J. Gustini, Esq. or Richard S. Goldstein, Esq., both of Nixon Peabody LLP. Mr. Gustini can be reached at 202-585-8725 (rgustini@nixonpeabody.com) and Mr. Goldstein can be reached at 202-585-8730 (rgoldstein@nixonpeabody.com). Thank you.

Respectfully submitted on behalf of
PNC Bank, National Association and
Royal Bank of Canada

By: Nixon Peabody LLP