

MEMORANDUM

August 21, 2012

To: File on Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank Act**”)

From: Parisa Haghshenas
Office of Investment Adviser Regulation
Division of Investment Management

Re: Meeting with SVB Financial Group (“SVB”)

On August 21, 2012, representatives of the SVB and their counsel at Debevoise & Plimpton LLP (“Debevoise”) participated in a meeting with Securities and Exchange Commission (“SEC”) staff from the Division of Investment Management and staff from the Federal Reserve Board.

The representatives of SVB that were present at the meeting were: Michael T. Lempres and Jason Doren.

The representative of Debevoise that was present at the meeting was Satish M. Kini.

The following members of IM staff participated in the meeting: Tram Nguyen, Parisa Haghshenas, and Jane Kim.

The following members of Federal Reserve Board staff participated in the meeting: Christopher Paridon and Anna Harrington.

The topic of discussion was the restriction on hedge fund and private equity fund investments under Section 619 of the Dodd-Frank Act. SVB submitted the attached handout in connection with the meeting.

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The Volcker Rule and Investments in Venture Capital Funds

Presentation before the
Securities and Exchange Commission and
the Federal Reserve Board
August 21, 2012

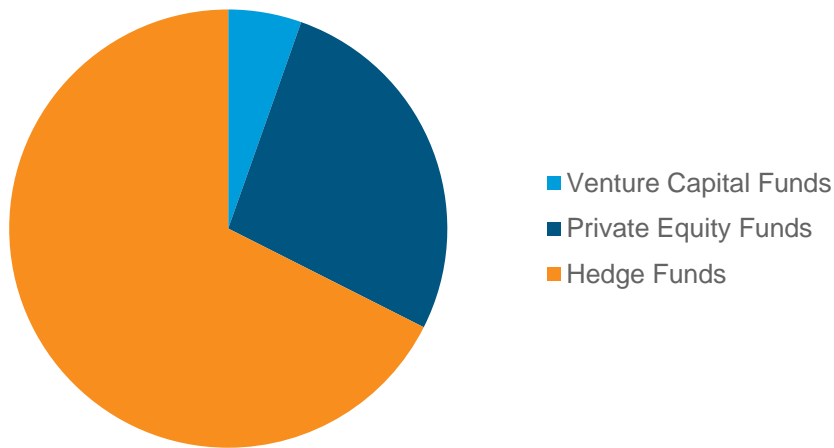
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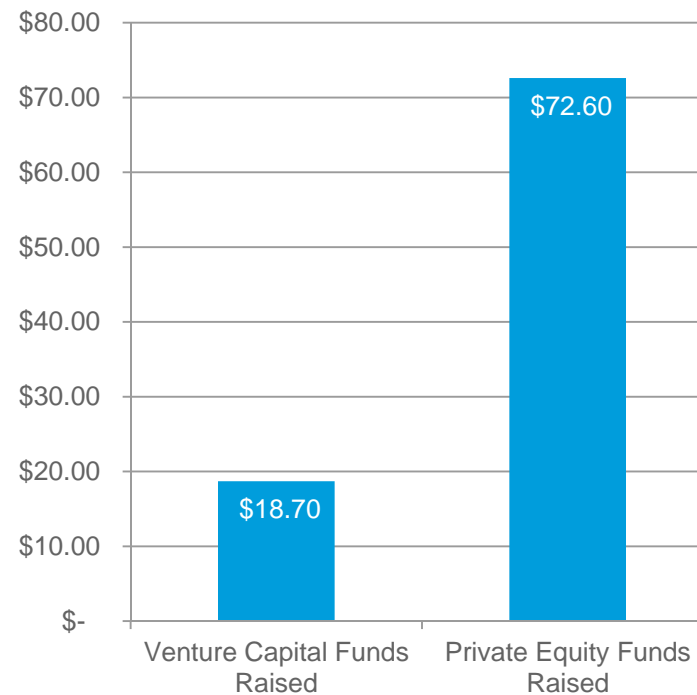
Investments In Venture Capital Funds Promote Safety and Soundness

Venture Capital Investments Do Not Create Speculative Risk – the Market Is Too Small for Banks to Invest for Speculative Profit

Market Size (in Billions)¹



New Funds Raised 2011 (in Billions)²



¹Source: Thomson Reuters, NVCA Yearbook 2012, p. 9; NVCA Yearbook 2012, p. 22; eVestment HFN, Hedge Fund Industry Estimates for July 2012 (August 7, 2012).

²Source: NVCA Yearbook 2012, pp. 9, 22.

Venture Capital Fund Investments Are Safe

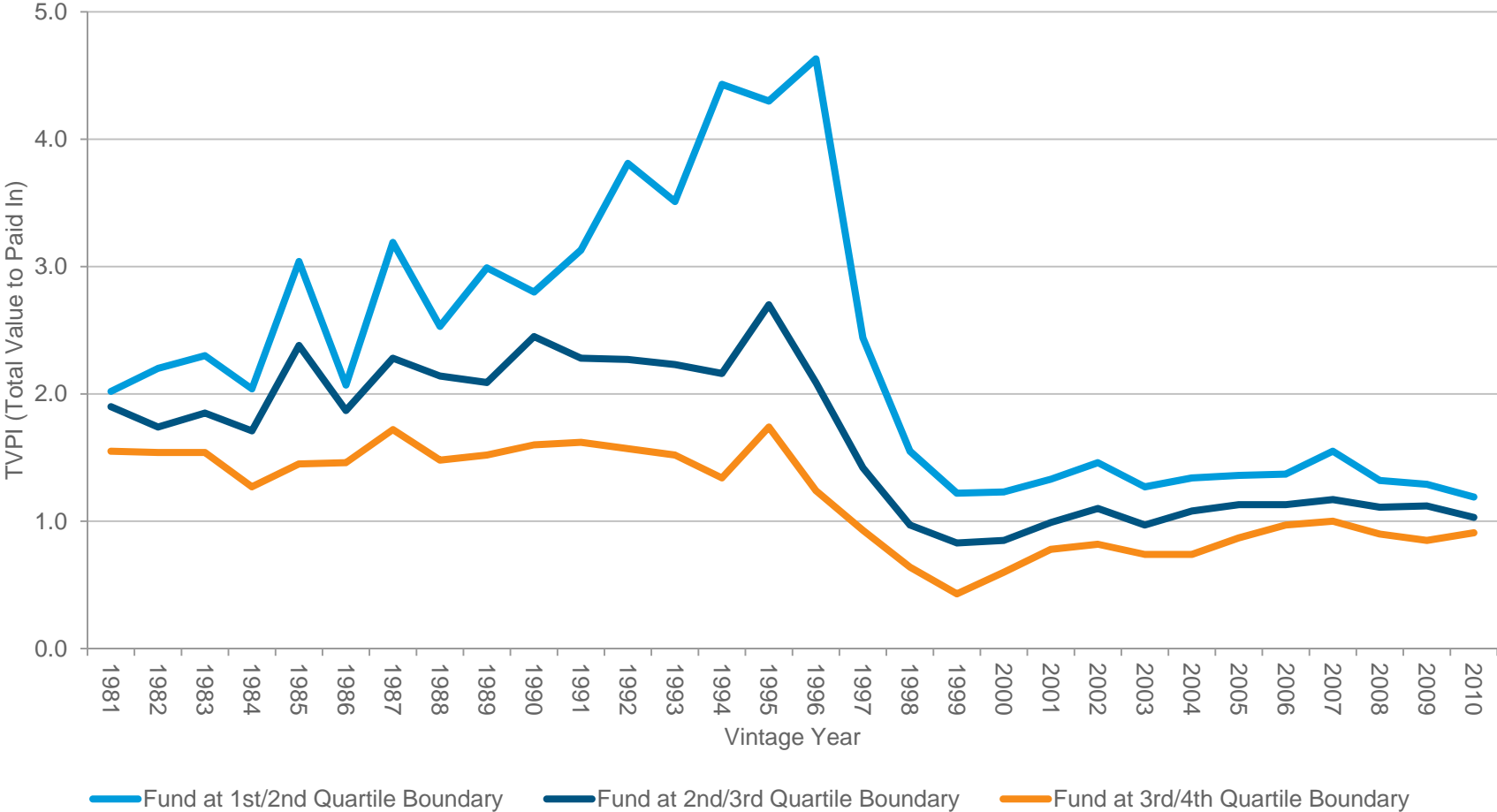
- Over the 25-year period from 1980-2005, 85% of venture funds returned invested capital plus gains to investors, while fewer than 10% of funds lost 50% or more of their invested capital¹
- Since 1981, US VC has distributed \$1.04 for every dollar contributed by LPs and 51c remains in portfolios (Total Value = \$1.55 per \$1.00 invested)²

¹Source: SVB Capital Analysis using Preqin Performance Analyst data

²Source: Cambridge Associates U.S Venture Capital Index®, the performance benchmark of the National Venture Capital Association. As of 12/31/2012

Investments in Venture Capital Funds Rarely Lose Money

TVPI Quartile Distribution by Vintage Year



Source: Cambridge Associates US Venture Capital TVPI multiples as of March 31, 2012.

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Banks Invest in Venture Capital Funds to Promote Traditional Lending and Asset Management Activities

Venture Capital Investments Promote and Protect Lending

The National Bureau of Economic Research has found:

- Banks use their venture relationships to strengthen core lending business
- Relationship loans have lower interest rates than non-relationship loans
- Banks with VC relationships are more likely to make loans to VC portfolio companies
- Venture capital relationships benefit companies with better loan pricing¹

A University of Florida Warrington College of Business Administration study found:

- Venture capital funds provide banks with “soft” information important to lending to small, young private firms²

¹Source: Thomas Hellmann, et al, *Building Relationships Early: Banks in Venture Capital*, National Bureau of Economic Research, pp. 2-3, 11-12, 16-17 (2003)

²Source: Laura Gonzalez, *Banks and Bubbles: How Good are Bankers at Spotting Winners?* Warrington College of Business Administration, University of Florida, pp. 3, 25 (2006).

Venture Capital Investments Promote and Protect Customer-Focused Asset Management

A 2008 study by Northwestern University and NYU found that:

- Venture funds that successfully raise subsequent or “follow-on” funds are oversubscribed, especially following high returns.¹

A 2002 White Paper by Grove Street Advisors found:

- Successful investments in VC funds can be traced back to the expertise and ability to invest in promising new funds early in their development.
- Fund managers that have delivered superior performance are able to raise far more capital than they require from their existing investors.
- Fund managers whose top tier performance is becoming evident would have to cut back allocations to loyal existing investors to make room for a new one, which is generally unlikely.²

¹Source: Grove Street Advisors, LLC, *The Case for Investing with New and Emerging Private Equity Fund Managers* (2002).

²Source: Hochberg, et al, *Informational Hold-up and Performance Persistence in Venture Capital*, Northwestern University, p. 26 (November 10, 2008)

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Venture Capital Funds Are as Safe or Safer than SBICs

Average Venture Capital Returns Are Similar to Average SBIC Returns

Vintage Year	SBIC TVPI	VC TVPI	SBIC Net IRR	VC Net IRR
2003	1.6	1.1	13.8%	2.3%
2004	1.4	1.2	8.1%	4.8%
2005	1.2	1.3	7.1%	7.9%
2006	1.0	1.1	-0.1%	1.9%
2007	1.0	1.2	1.9%	9.1%

Source: SBA and Thomson Reuters data as of December 31, 2010. SBIC data represent private pooled statistics. Thomson Reuters data represent pooled average returns. Data for funds less than 5 years old is not meaningful due to j-curve.

Venture Capital Funds Are Less Risky Based on Key Attributes

	Private Equity (aka Buyouts)	SBIC	Venture Capital
Average Fund Size	\$600M	\$60M	\$100M
Use of Leverage	Yes	Yes	No
Years from Investment to Exit	3 – 5	3 – 10	6 – 10
Public Company Investments	Yes	Limited	Rarely

Key Attributes of Private Equity, SBICs and Venture Capital Funds – SOURCES

	Private Equity	SBIC	Venture Capital
Avg. Fund Size	2012 NVCA Yearbook p. 22	SBIC program overview from SBIA Aug. 2012 p. 1 (Total cap @ Risk / Total # of Licensees)	2012 NVCA Yearbook p. 22
Use of Leverage	Industry Practice; Stated Strategies	Industry Practice; Stated Strategies	Industry Practice; Stated Strategies
Years from Investment to Exit	Pitchbook 2011 PE Breakdown p. 10	Assume between PE and VC depending on strategy of fund	2012 NVCA Yearbook p. 52
Public Company Investments	Industry Practice; Stated Strategies	SBA Rules and Stated Strategies	Advisers Act and Stated Strategies

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The Adviser Act Definition of Venture Capital Works – With a Few Revisions

The Advisers Act Definition Would Permit Legitimate Venture Investing and Limit Potential for Abuse

- The definition of venture capital focuses on attributes that distinguish venture capital – “substance over form.”
- Definition effectively includes the vast majority of venture capital funds and restricts the potential for abuse.
- Key attributes:
 - Leverage
 - Public market investments and trading
 - Redemption rights
 - Fund must market itself as pursuing a venture capital strategy

The Advisers Act Definition Should be Revised to Reflect New Purpose

- In order to capture effectively the benefits of excluding venture capital funds from the prohibitions of the Volcker Rule, the definition should be revised to address:
 - Venture Capital Funds of Funds
 - Venture Lending Funds
 - Venture Capital Secondary Funds

For More Information

If you have any questions or if we may provide any more information, please contact:

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Bank Investments in Venture Capital Funds Promote Safety and Soundness and Do Not Create Speculative Risk

The core objective of the Volcker Rule is to prevent speculative risk taking by banks without hindering traditional, client-oriented banking activities. See Notice of Proposed Rulemaking, p. 9 (“NPR”).¹ Traditional banking activities include lending, asset management, and sponsoring or investing in Small Business Investment Companies (SBICs).² See NPR, pp. 9, 15-16 and fn 47, 149; BHC Act sec 13(d)(1)(E), (G) and (J).

Banks Do Not Invest in Venture Capital Funds for Speculative Profit

Banks invest in venture capital funds primarily to support traditional banking activities, not for speculative profit. One reason for this is that venture capital investments are too small for banks to make enough profit to matter to their shareholders.³ According to the most recent data, there is less than \$200 billion currently invested in all venture capital funds. Thomson Reuters, *NVCA Yearbook 2012*, p. 9. In contrast, a *trillion* dollars is managed by private equity funds⁴ and \$2.5 *trillion* managed by hedge funds. *NVCA Yearbook 2012*, p. 22; eVestment HFN, *Hedge Fund Industry Estimates for July 2012* (August 7, 2012). In 2011, venture capital funds raised \$18.7B in new commitments from investors; private equity funds raised \$72.6B. *NVCA Yearbook 2012*, pp. 9, 22. The venture capital fund market is tiny compared to the hedge fund and private equity markets. This means that banks – particularly large banks - could not invest enough in venture capital to “move the needle” even if they wanted to. The market is simply too small to provide the amount of profit that matters, particularly for large banks. See SVB Comment Letter, pp. 15-16.

Banks Invest in Venture Capital Funds to Promote and Protect Traditional Banking Activities, Such as Small Business Lending and Client Asset Management

When banks invest in venture capital funds, they build relationships and receive information that allows them to better understand the small businesses and industry sectors in which those funds are investing. Venture capital funds provide their investors (limited partners)

¹ According to two of the most vocal proponents of a strong Volcker Rule, its primary purpose is to prevent proprietary trading, whether done directly or by sponsoring or investing in hedge funds or private equity funds that engage in the same. Senators Jeff Merkley and Carl Levin, “*The Dodd-Frank Act Restrictions on Proprietary Trading and Conflicts of Interest: New Tools to Address Evolving Threats*,” 48 *Harvard Journal on Legislation* at 516, 546-7 (2011).

² In the NPR, the agencies have also recognized that investments in bank owned life insurance accounts (BOLIs) and asset-backed securitization funds are more like traditional banking activities than activities designed for speculative profit, and meet the test of promoting and protecting safety and soundness of banks and the financial stability of the United States. See NPR pp. 149-152.

³ Another reason is the long-term nature of venture capital investments. See SVB Comment Letter to Agencies, pp. 15, 18 (February 13, 2012) (“SVB Comment Letter”); SVB Letter to the Financial Stability Oversight Council, p. 7 (November 5, 2010) (“SVB FSOC Letter”).

⁴ Thomson Reuters calculates capital under management as the cumulative amount committed to funds on a rolling eight-year basis. Current capital under management is calculated by taking the capital under management calculation from the previous year, adding in the current year’s funds’ commitments, and subtracting the capital raised eight years prior.

with information on how their portfolio companies are performing, as well as insights and predictions on the industries and sectors in which the funds invest. If a banking entity invests in a portfolio of many venture capital funds, it can see which funds and companies are outperforming others. This additional information allows banks to make smarter lending decisions, and to provide more credit on better terms to the best performing companies, with average to above average loss rates. See Thomas Hellmann, et al, *Building Relationships Early: Banks in Venture Capital*, National Bureau of Economic Research, pp. 2-3, 11-12, 16-17 (2003); T. Fischer and G. Rassenfossé, *Venture Debt Financing: Determinants of the Lending Decision*, pp. 2-4, 13, 18-19 (2012) (lenders to startups rely on non-traditional criteria, such as information about VC-backing, to evaluate repayment capacity) (“we suspect the strength of ties between VCs and [lenders] and the VC’s reputation play a central role in the lending decision and the terms of the debt agreement”); Darien Ibrahim, *Debt As Venture Capital*, University of Illinois Law Review Vol. 2010, pp. 1184-7, 1189-95, 1209-10 (2010) (loans to startups rarely exist without venture capital and banks rely on future VC funding to repay loans to pre-revenue companies); see also Laura Gonzalez, *Banks and Bubbles: How Good are Bankers at Spotting Winners?* Warrington College of Business Administration, University of Florida, pp. 3, 25 (2006) (venture capital funds provide banks with “soft” information important to lending to small, young private firms); Philip E. Strahan, *Borrower Risk and the Price and Nonprice Terms of Bank Loans*, Federal Reserve Bank of New York, Bank Studies Function (October 1999); Berger & Udell, *Relationship Lending and Lines of Credit in Small Firm Finance*, University of Chicago Journal of Business, vol. 68, no. 3, pp. 377-9 (1995) (banks derive private information from relationships that lead to lower interest rates for small business borrowers); Amir Sufi, *Bank Lines of Credit in Corporate Finance*, FDIC Center for Financial Research, abstract (2005) (banks extend lines of credit mainly to businesses with high profitability and working capital); Kartasheva and Park, *Real Effects of Changing Rating Standards*, Wharton School of Business, University of Pennsylvania, pp. 2-3, 9, 20 (2011) (positive credit rating information leads to more access to capital and at lower cost).

Banks also invest in venture capital funds to promote and protect their asset management capabilities. One way they do this by making small investments in promising but unproven new fund managers. These small investments gives them access to subsequent funds if that manager is successful, providing a toehold for the bank’s asset management clients, typically through a fund of funds managed by the banking entity. Because venture capital funds are small, if a first-time fund significantly outperforms its peers, subsequent funds will be “oversubscribed,” meaning there is little or no room for new investors. See Grove Street Advisors, *The Case for Investing with New and Emerging Private Equity Fund Managers*, p.1 (June 2002); Hochberg, et al, *Informational Hold-up and Performance Persistence in Venture Capital*, Northwestern University, p. 26 (November 10, 2008); see also <http://www.forbes.com/sites/tomiogeron/2012/01/26/softtech-vc-closes-oversubscribed-55m-third-fund/>; <http://techcrunch.com/2012/07/24/tenaya-capital-closes-oversubscribed-372m-fund-seeks-a-new-kayak/>; <http://betabeat.com/2011/12/firstmark-capital-quietly-announces-225-m-oversubscribed-early-stage-fund/>. By investing early, banks are able to learn about, build relationships with and secure investment allocations for their clients in these top-performing, difficult to access new funds.

Bank investments in venture capital funds promote and protect safety and soundness by improving lending and asset management, both traditional client-oriented activities.

Bank Investments in Venture Capital Funds Serve the Same Purpose as Investments in SBICs with No Greater Risk

SBICs are private investment funds that obtain a license from the SBA to receive government sponsored leverage. They make long-term investments in or loans to small businesses, which help create jobs and foster innovation. Banks are allowed to sponsor and invest in SBICs under the Volcker Rule because Congress does not want to prevent banks from making sound investments in small businesses and because investing in and sponsoring SBICs is consistent with safe and sound operation of banking entities and promotes the financial stability of the United States. NPR, p. 139.

Venture capital funds invest in the same types of companies as SBICs and these investments promote and protect safety and soundness and contribute to financial stability in the same way, but on a much broader scale. See Comment letter from Small Business Investor Alliance dated Feb 13, 2012, pp. 7-8; SVB comment letter pp. 24-27; see also Jonathan D. Joseph, *Small Business Investment Companies Offer Big Benefits to Community Banks*, Western Independent Bankers (June/July 2004) (SBICs allow community banks to build relationships with startups, paving the way for banking and lending relationships as the companies mature). In fact, the SBA lists the SBIC program under the heading “Venture Capital” on their website, showing that the SBA views SBICs as a type of venture capital fund. <http://www.sba.gov/about-sba-services/2835>.

The primary differences between venture capital funds and SBICs are that venture capital funds are regulated by the SEC⁵ rather than the SBA, and venture capital funds do not use leverage, which further reduces any possibility of systemic risk. In fact, some industry commentators have opined that SBICs are riskier than non-SBIC venture capital funds because the best fund managers do not raise SBIC funds. See, eg., Fred Wilson, *A VC: SBICs*, http://www.avc.com/a_vc/2004/12/sbics.html (SBICs are subject to adverse selection - managers who cannot raise private capital); Peter S. Cohen, *Why the SBA's Early-Stage Innovation Fund Won't Help Startups Access Capital*, <http://www.entrepreneur.com/blog/222980> (the best companies attract private capital and do not need government assistance).

Based on performance data, SBICs and venture capital funds have similar risk profiles as asset classes. As of December 31, 2010, the average value of all investments in SBICs formed between 2003 and 2007 was 1.2x the amount of investors' paid-in capital. The average value of investments in all venture capital funds formed in the same time period was 1.1x, and

⁵ Advisers to solely venture capital funds are Exempt Reporting Advisers subject to regulation by SEC. The fact that Congress exempted venture funds from all of the requirements of a registered investment adviser shows that it considers venture capital funds to be less risky and more important to job creation and innovation than private equity or hedge funds. And there are numerous statements of Congressional intent showing that Congress did not intend the Volcker Rule to cover venture capital funds. See SVB FSOC Letter, pp. 3-6; SVB Comment Letter, pp. 1-2, 5.

1.4x⁶ for venture capital funds in the top quartile of performance -- the funds in which most institutional investors (including banks) invest.⁷

The Advisers Act Definition of a Venture Capital Fund – Slightly Expanded – Is an
Appropriate Definition for the Volcker Rule

If the Agencies don't define hedge funds and private equity funds according to what they do to create systemic risk (short-term trading, investor redemption rights, use of leverage, large/controlling investments in public markets), then in order to follow Congress' intent and not limit properly conducted venture capital investments, they will need to define a venture capital fund.⁸

The Advisers Act definition of a venture capital fund, with some revisions, is appropriate for the Volcker Rule. It is strict enough to exclude hedge and private equity funds because it focuses on the aspects of those investment strategies that relate to systemic risk. See Release No. IA-3222, p. 10 (VC definition designed to distinguish VC funds from hedge and PE to address Congress' concerns about systemic risk). Specifically, the definition: (1) requires investments in qualifying portfolio companies, which prohibits short-term trading and significant public market-investing, (2) restricts the use of leverage, which prevents leveraged buyouts, (3) restricts investor redemptions, which protects against a "run on the fund," and (4) requires that the fund represent itself as pursuing a venture capital strategy. This last component is critical, because it subjects the fund manager to liability, removal and termination of the fund if it uses its investors' funds to pursue a different strategy.

However, without a few key revisions, the Advisers Act definition would exclude certain venture capital funds that provide capital to the small business ecosystem without any systemic risk. Specifically, the definition should be made more flexible to include venture capital funds of funds, venture lending funds and venture capital funds that focus on secondary investments (buying shares from founders, employees or other shareholders rather than directly from the company).⁹

⁶ For venture capital funds, the value is trending upward. As of March 31, 2012, the average value of investments in all VC funds raised during the 2003-2007 time period was 1.2x and 1.6x for top-quartile funds. More recent data has not been available for SBICs.

⁷ Data from U.S. Small Business Administration and Thomson Reuters, Thomson ONE database.

⁸ See statements of congressional intent cited in SVB Comment Letter pp. 21-22 and fn 82 and SVB FSOC Letter, pp. 8-9. Congress recognized that venture capital funds are different from private equity funds in Title IV of the Dodd-Frank Act, where it excluded venture capital fund advisers from certain registration requirements under the Investment Advisers Act of 1940 and directed the Securities and Exchange Commission to define venture capital. The main characteristics that distinguish venture capital funds from private equity funds are the use of leverage and investments in publicly-traded companies. Private equity funds use leverage to financially engineer returns in leveraged buyouts or take private transactions and frequently invest in publicly-traded companies. Venture capital funds do not use leverage and invest in small companies, long before they are publicly-traded.] [See p. 23 SVB comment letter] See also SVB's comment letter to the FSOC dated __, 2012, pp 6-8 for discussion of key differences between venture capital funds and private equity funds.

⁹ The result of venture funds of funds, venture lending funds and VC secondary funds being left out of the Advisers Act definition is that they have to register with the SEC, a much less draconian result than under the Volcker Rule, which would prevent those funds from receiving investments from banking entities and

It is equally critical that any venture capital definition under the Volcker Rule is applied at the fund level, rather than the adviser level, because there are venture capital funds that are managed by advisers who also manage other funds. A true venture capital fund should not be excluded from the definition simply because it is managed by a firm that also separately manages private equity or hedge funds. Of course, those hedge or PE funds would be covered by the Volcker Rule's prohibitions.

Venture Capital Funds of Funds Should Be Part of Any Venture Capital Fund Exception from the Volcker Rule.

There is no indication that Congress intended to exclude funds of funds from the definition of a venture capital fund. At least one agency – the Federal Reserve Board – has indicated that a fund of funds should be included in definitions that apply to the underlying funds in which it invests.¹⁰

If a fund of funds invests only in funds that separately qualify as venture capital funds – and not in any other type of fund – there is no policy reason to exclude it from the Commission's definition. Like other venture capital funds, venture capital funds of funds contribute substantial capital to early-stage companies, do not use leverage, and do not contribute to systemic risk. If a venture capital fund of funds chose to use leverage, it would be bound by the same rules.

In fact, there are strong policy reasons *for* including venture capital funds of funds in the definition. Venture capital funds of funds are a critical, stable source of funding for the venture capital funds and the portfolio companies in which they invest. They are part of the same venture capital/emerging company/innovation/job creation ecosystem and should not be treated differently from other venture capital funds.

To accomplish the change that we propose, the Commission should revise section (c)(4)(iv) to include investments in other venture capital funds as “qualifying portfolio companies.” Otherwise the rule will unnecessarily discriminate between different types of venture capital investment strategies and discourage investments that create jobs, foster innovation and enhance our country's global competitiveness. Other sections of the definition properly define venture capital funds and protect against hedge and private equity funds from trying to avail themselves of the venture capital exemption.

ultimately reduce funding for small businesses and entrepreneurs. See SVB's Comment Letter p. 27-30; SVB Comment Letter on Exemption for Advisers to Venture Capital Funds, pp. 1-6 (January 24, 2011).

¹⁰ See Federal Reserve, Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities, 75 Fed. Reg. 72,741, 72,744 (Nov. 26, 2010) (proposing to define an illiquid fund as a fund that invests not only directly in illiquid assets but also “in other hedge funds or private equity funds” that also invest in illiquid assets); see also Financial Stability Oversight Council, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds and Private Equity Funds, pp. 57-58 (January 2011) (citing testimony of Paul Volcker before the Senate Banking Committee that “funds of funds” should remain permissible under the Volcker Rule because they are a means of efficiently providing customers with access to independent hedge funds or private equity funds).

Venture Lending Funds Should be Exempt from the Volcker Rule

Similar to venture capital funds, venture lending funds provide capital to start-up companies. They simply do so by making loans instead of equity investments. In essence, investing in a credit fund is a form of lending, which is a traditional bank activity and should not be restricted. Using a fund structure allows third party investors to provide more capital to lend and allows a bank to efficiently syndicate and diversify its risk.

Additionally, loans are typically less risky than equity investing because creditors have superior legal rights to repayment than equity holders. It simply makes sense to include venture lending funds in any venture capital definition for purposes of an exemption from the restrictions of the Volcker Rule, unless the Agencies clarify that all lending or “credit” funds are separately exempted.

Venture Capital Funds that Primarily Buy Shares from Founders or Employees Should Be Part of Any Venture Capital Exception to the Volcker Rule

Many venture capital funds make secondary investments as an entry into a company, as part of a strategy to boost returns for their investors (because such shares can often be purchased at a discount), as a way to provide liquidity to members of the management team, or as a way to increase their ownership without increasing overall dilution, typically when another investor is unwilling or unable to maintain their investment.

Funds that primarily make secondary purchases in qualifying portfolio companies provide valuable capital to entrepreneurs and angel investors, both critical components of the small business ecosystem. Allowing banking entities to invest in venture capital funds that primarily buy shares from founders, employees or other existing shareholders will not allow hedge funds or traditional private equity funds to avail themselves of the venture capital definition. The other restrictions noted above would prevent that result.