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Sent: Thursday, November 21, 2013 7:53 AM
To: [REDACTED]
Cc: [REDACTED] Dennis Kelleher
Subject: Volcker Rule

Kara,

Thank you for all you have done and are doing in your new capacity as SEC Commissioner, including in particular regarding the Volcker Rule.

We have recently met with or talked to the agencies and many of the principals involved in the Volcker Rule process, including SEC Chair Mary Jo White and her senior staff, CFTC Chair Gensler and his senior staff, among others.

However, I think we failed to send you our attached suggested language changes (just 10 words for market making), which will eliminate the economic incentive to prop trade and, thereby, will end prop trading. This will also make the rule easy for the market to implement and for regulators to enforce.

Not sure if this helps at this stage or not and we probably should have made sure you had it a long time ago, but I wanted you to have it because virtually everyone else has it.

The entertaining and memorable power point presentation we gave Mary Jo is available here (which we have been told even Paul Volcker himself liked):

<http://www.bettermarkets.com/sites/default/files/Volcker%20Rule%20Better%20Markets%20SEC%209-30-13.pdf>

The more recent, shorter, less entertaining power point we've used for others is here:

<http://www.bettermarkets.com/sites/default/files/Volcker%20Rule%2011-15-13.pdf>

Because we gave the presentation and suggested language to SEC Chair and staff, the SEC has already publicly disclosed/posted the materials and we have separately posted everything to our website and widely circulated it so no secrets here!

Keep up the fight. As you know, it's important and worth it! Let us know if we can be helpful in any way.

Best,

Dennis M. Kelleher
President and CEO

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(iv) The covered banking entity is:
(A) With respect to a purchase or sale effected in connection with a distribution of one or more covered financial positions that are securities, other than exempted securities, security-based swaps, commercial paper, bankers' acceptances, or commercial bills:
(1) A dealer that is registered with the SEC under section 15 of the Exchange Act (15 U.S.C. 78o), or a person that is exempt from registration or excluded from regulation as a dealer thereunder; or

(2) Engaged in the business of a dealer outside of the United States and subject to substantive regulation of such business in the jurisdiction where the business is located;

(B) With respect to a purchase or sale effected as part of a distribution of one or more covered financial positions that are municipal securities, a municipal securities dealer that is registered under section 15B of the Exchange Act (15 U.S.C. 78o-4) or exempt from registration thereunder; or

(C) With respect to a purchase or sale effected as part of a distribution of one or more covered financial positions that are government securities, a government securities dealer that is registered, or that has filed notice, under section 15C of the Exchange Act (15 U.S.C. 78o-5) or exempt from registration thereunder;

(v) The underwriting activities of the covered banking entity with respect to the covered financial position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties;

(vi) The underwriting activities of the covered banking entity are designed to generate revenues primarily from fees, commissions, underwriting spreads or other income not attributable to:

(A) Appreciation in the value of covered financial positions related to such activities; or

(B) The hedging of covered financial positions related to such activities; and

(vii) The compensation arrangements of persons performing underwriting activities are designed not to reward proprietary risk-taking.

(3) *Definition of distribution.* For purposes of paragraph (a) of this section, a *distribution* of securities means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

(4) *Definition of underwriter.* For purposes of paragraph (a) of this section, *underwriter* means:

(i) A person who has agreed with an issuer of securities or selling security holder:

(A) To purchase securities for distribution;

(B) To engage in a distribution of securities for or on behalf of such issuer or selling security holder; or

(C) To manage a distribution of securities for or on behalf of such issuer or selling security holder; and

(ii) A person who has an agreement with another person described in paragraph (a)(4)(i) of this section to engage in a distribution of such securities for or on behalf of the issuer or selling security holder.

(b) Market making-related activities.

(1) *Permitted market making-related activities.* The prohibition on proprietary trading contained in § ___.3(a) does not apply to the purchase or sale of a covered financial position by a covered banking entity that is made in connection with the covered banking entity's market making-related activities.

(2) *Requirements.* For purposes of paragraph (b)(1) of this section, a purchase or sale of a covered financial position shall be deemed to be made in connection with a covered banking entity's market making-related activities only if:

(i) The covered banking entity has established the internal compliance program required by subpart D that is designed to ensure the covered banking entity's compliance with the requirements of paragraph (b)(2) of this section, including reasonably designed written policies and procedures, internal controls, and independent testing;

(ii) The trading desk or other organizational unit that conducts the purchase or sale holds itself out as being willing to buy and sell, including through entering into long and short positions in, the covered financial position for its own account on a regular or continuous basis;

(iii) The market making-related activities of the trading desk or other organizational unit that conducts the purchase or sale are, with respect to the covered financial position, designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties;

(iv) The covered banking entity is:

(A) With respect to a purchase or sale of one or more covered financial positions that are securities, other than exempted securities, security-based swaps, commercial paper, bankers' acceptances, or commercial bills:

(1) A dealer that is registered with the SEC under section 15 of the Exchange

Act (15 U.S.C. 78o), or a person that is exempt from registration or excluded from regulation as a dealer thereunder; or

(2) Engaged in the business of a dealer outside of the United States and subject to substantive regulation of such business in the jurisdiction where the business is located;

(B) With respect to a purchase or sale of one or more covered financial positions that are swaps:

(1) A swap dealer that is registered with the CFTC under the Commodity Exchange Act (7 U.S.C. 1a) or a person that is exempt from registration thereunder; or

(2) Engaged in the business of a swap dealer outside of the United States and subject to substantive regulation of such business in the jurisdiction where the business is located;

(C) With respect to a purchase or sale of one or more covered financial positions that are security-based swaps:

(1) A security-based swap dealer that is registered with the SEC under section 15F of the Exchange Act (15 U.S.C. 78o-10) or a person that is exempt from registration thereunder; or

(2) Engaged in the business of a security-based swap dealer outside of the United States and subject to substantive regulation of such business in the jurisdiction where the business is located;

(D) With respect to a purchase or sale of one or more covered financial positions that are municipal securities, a municipal securities dealer that is registered under section 15B of the Exchange Act (15 U.S.C. 78o-4) or a person that is exempt from registration thereunder; or

(E) With respect to a purchase or sale of one or more covered financial positions that are government securities, a government securities dealer that is registered, or that has filed notice, under section 15C of the Exchange Act (15 U.S.C. 78o-5) or a person that is exempt from registration thereunder;

(v) The market making-related activities of the trading desk or other organizational unit that conducts the purchase or sale are designed to generate revenues primarily from fees, commissions, bid/ask spreads or other income not attributable to:

(A) Appreciation in the value of covered financial positions it holds in trading accounts; or

(B) The hedging of covered financial positions it holds in trading accounts;

(vi) The market making-related activities of the trading desk or other organizational unit that conducts the purchase or sale are consistent with the

and do not exceed

and in fact

commentary provided in Appendix B; and

(vii) The compensation arrangements of persons performing the market making-related activities are designed not to reward proprietary risk-taking.

(3) *Market making-related hedging.* For purposes of paragraph (b)(1) of this section, a purchase or sale of a covered financial position shall also be deemed to be made in connection with a covered banking entity's market making-related activities if:

(i) The covered financial position is purchased or sold to reduce the specific risks to the covered banking entity in connection with and related to individual or aggregated positions, contracts, or other holdings acquired pursuant to paragraph (b) of this section; and

(ii) The purchase or sale meets all of the requirements described in § __.5(b) and, if applicable, § __.5(c).

§ __.5 Permitted risk-mitigating hedging activities.

(a) *Permitted risk-mitigating hedging activities.* The prohibition on proprietary trading contained in § __.3(a) does not apply to the purchase or sale of a covered financial position by a covered banking entity that is made in connection with and related to individual or aggregated positions, contracts, or other holdings of a covered banking entity and is designed to reduce the specific risks to the covered banking entity in connection with and related to such positions, contracts, or other holdings.

(b) *Requirements.* For purposes of paragraph (a) of this section, a purchase or sale of a covered financial position shall be deemed to be in connection with and related to individual or aggregated positions, contracts, or other holdings of a covered banking entity and designed to reduce the specific risks to the covered banking entity in connection with and related to such positions, contracts, or other holdings only if:

(1) The covered banking entity has established the internal compliance program required by subpart D designed to ensure the covered banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures regarding the instruments, techniques and strategies that may be used for hedging, internal controls and monitoring procedures, and independent testing;

(2) The purchase or sale:

(i) Is made in accordance with the written policies, procedures and internal controls established by the

covered banking entity pursuant to subpart D of this part;

(ii) Hedges or otherwise mitigates one or more specific risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, basis risk, or similar risks, arising in connection with and related to individual or aggregated positions, contracts, or other holdings of a covered banking entity;

(iii) Is reasonably correlated, based upon the facts and circumstances of the underlying and hedging positions and the risks and liquidity of those positions, to the risk or risks the purchase or sale is intended to hedge or otherwise mitigate;

(iv) Does not give rise, at the inception of the hedge, to significant exposures that were not already present in the individual or aggregated positions, contracts, or other holdings of a covered banking entity and that are not hedged contemporaneously;

(v) Is subject to continuing review, monitoring and management by the covered banking entity that:

(A) Is consistent with the written hedging policies and procedures required under paragraph (b)(1) of this section; and

(B) Maintains a reasonable level of correlation, based upon the facts and circumstances of the underlying and hedging positions and the risks and liquidity of those positions, to the risk or risks the purchase or sale is intended to hedge or otherwise mitigate; and

(C) Mitigates any significant exposure arising out of the hedge after inception; and

(vi) The compensation arrangements of persons performing the risk-mitigating hedging activities are designed not to reward proprietary risk-taking.

(c) *Documentation.* With respect to any purchase, sale, or series of purchases or sales conducted by a covered banking entity pursuant to this § __.5 for risk-mitigating hedging purposes that is established at a level of organization that is different than the level of organization establishing or responsible for the positions, contracts, or other holdings the risks of which the purchase, sale, or series of purchases or sales are designed to reduce, the covered banking entity must, at a minimum, document, at the time the purchase, sale, or series of purchases or sales are conducted:

(1) The risk-mitigating purpose of the purchase, sale, or series of purchases or sales;

(2) The risks of the individual or aggregated positions, contracts, or other holdings of a covered banking entity

that the purchase, sale, or series of purchases or sales are designed to reduce; and

(3) The level of organization that is establishing the hedge.

§ __.6 Other permitted proprietary trading activities.

(a) *Permitted trading in government obligations.*

(1) The prohibition on proprietary trading contained in § __.3(a) does not apply to the purchase or sale by a covered banking entity of a covered financial position that is:

(i) An obligation of the United States or any agency thereof;

(ii) An obligation, participation, or other instrument of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) An obligation of any State or any political subdivision thereof.

(2) An obligation or other instrument described in paragraphs (a)(1)(i), (ii) or (iii) of this section shall include both general obligations and limited obligations, such as revenue bonds.

(b) *Permitted trading on behalf of customers.* (1) The prohibition on proprietary trading contained in § __.3(a) does not apply to the purchase or sale of a covered financial position by a covered banking entity on behalf of customers.

(2) For purposes of paragraph (b)(1) of this section, a purchase or sale of a covered financial position by a covered banking entity shall be considered to be on behalf of customers if:

(i) The purchase or sale:

(A) Is conducted by a covered banking entity acting as investment adviser, commodity trading advisor, trustee, or in a similar fiduciary capacity for a customer;

(B) Is conducted for the account of the customer; and

(C) Involves solely covered financial positions of which the customer, and not the covered banking entity or any subsidiary or affiliate of the covered banking entity, is beneficial owner (including as a result of having long or short exposure under the relevant covered financial position);

(ii) The covered banking entity is acting as riskless principal in a transaction in which the covered banking entity, after receiving an order to purchase (or sell) a covered financial

and do not

Similar changes to this section