

October 12, 2017

The Honorable Jerome H. Powell
Governor
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Room B-2004
Washington, D.C. 20551

Re: Volcker Rule Reform

Dear Governor Powell:

We very much appreciate your comments made recently at the *Reuters Summit: Financial Regulation in 2017*. Your affirmation of the Federal Reserve's commitment to revise and refine the Volcker Rule regulations in order to make them more effective, efficient, and focused by addressing those provisions that unnecessarily impede economic growth is a goal that the American Bankers Association¹ (ABA) and our members have been emphasizing as timely and appropriate.

We commend the Federal Reserve for undertaking this process together with the other federal financial agencies² (Agencies) in order to provide for uniform and consistent application of revisions that would reduce significantly the overly complex design of the implementing regulations. We agree that the Federal Reserve and the Agencies possess sufficient regulatory authority and discretion to align the Volcker Rule regulation more closely with the systemic risk management purposes of the statute.

We note from your remarks that you believe there is more flexibility for revisions to the regulation's proprietary trading restrictions than for the restrictions that apply to covered fund investments. We agree that important steps can and should be undertaken with regard to proprietary trading definitions and regulations. We believe, however, that there also is much that can and should be done to revise regulations affecting fund investments.

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend more than \$9 trillion in loans.

² The five federal financial agencies charged with implementing and administering the Volcker Rule are the Federal Reserve, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC).

As explained in our recent letter to the Office of the Comptroller of the Currency (OCC), responding to its Request for Information on proposals for revising the Volcker Rule regulation,³ we believe that the Agencies likewise have the requisite authority, latitude, and flexibility to revise the covered fund restrictions that would increase the efficacy of the regulation and in the process remove unwarranted obstacles to economic growth. Specifically, we believe that the Federal Reserve and the Agencies have the statutory authority to revise the covered fund provisions to focus clearly and with certainty on the activity that the statute seeks to prohibit, namely, engaging primarily in stand-alone, short-term proprietary trading.

This can be accomplished in three ways. First, we recommend limiting the definition of “covered fund” expressly to those Section 3(c)(1) and Section 3(c)(7) funds⁴ that are engaged primarily in short-term proprietary trading. This would align the definition with the statute’s intent while excluding those funds that rely on those Investment Company Act exemptions but do not engage in the activity that the Volcker Rule is aimed at proscribing.

Second, the exclusions from “covered fund” currently found in the regulation can be preserved and revised in order to identify further those funds, such as venture capital funds and public welfare investment entities, that should not be treated as covered funds simply for relying on a federal securities law exemption (*i.e.*, sections 3(c)(1) or 3(c)(7)) that is unrelated to the purposes of the Volcker Rule. Such fund vehicles are used to provide programs for various areas of public welfare beyond the regulation’s narrowly drawn covered fund exception, including disaster relief, education, financial literacy, and supporting underserved communities. Applying the Volcker Rule to these funds is alien to the purposes of the statute.

Third, the regulation’s definition of the term, “ownership interest,” can be narrowed substantially in order to reduce the regulatory uncertainty caused by its unintentionally broad reach, since the statute does not contemplate any expansion of the term beyond its ordinary meaning. In particular, the definition should apply only to equity or equity-like interests that are commonly understood to indicate a *bona fide* ownership interest in a covered fund.

In your remarks you stated that there is “significant flexibility” to make the Volcker Rule regulation “more effective and more efficient even for the largest institutions but certainly for the small institutions.” You also mentioned that it is important that the Agencies “get it right” in providing Volcker Rule reform. We believe that these changes to the covered fund provisions, taken together with revisions to the proprietary trading restrictions, would achieve these goals by tailoring the regulations alongside congressional intent, thereby addressing systemic risk while encouraging safe and sound banking practices and facilitating economic growth.

³ See ABA Letter to the OCC (Sept. 21, 2017) (responding to OCC RFI on Volcker Rule reform proposals) (available at <https://www.aba.com/Advocacy/commentletters/Documents/cl-Revising-Volcker2017.pdf>); Department of the Treasury, Office of the Comptroller of the Currency, Proprietary Trading and Certain Interests in and Relationships with Covered Funds (Volcker Rule); Request for Input, 82 *Fed. Reg.* 36,692 (2017).

⁴ That is, investment funds that rely on the exemptive provisions of section 3(c)(1) or section 3(c)(7) of the Investment Company Act of 1940, as amended (Investment Company Act). See 15 U.S.C. § 80a-1 *et seq.*

Thank you again for articulating the Federal Reserve's interest and commitment in pursuing Volcker Rule reform. We look forward to working with the Federal Reserve in achieving this important regulatory objective.

Sincerely,

BOB NICHOLS