

December 17, 2012

Office of the Comptroller of the Currency
250 E Street, NW
Washington, DC 20219

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
Washington, DC 20581

Re: Proposed Rulemaking Implementing the Provisions of Section 13 of the Bank Holding Company Act of 1956, as Amended (Volcker Rule)

Ladies and Gentlemen:

The American Bankers Association (ABA) understands that the federal regulatory agencies (Agencies) responsible for issuing rules that implement the Volcker Rule are making progress on the very difficult task of developing final rules. We appreciate the Agencies' sustained efforts at generating workable regulations. We likewise commend the Agencies for taking on the exceptionally elusive task to define, disentangle, and dissect permissible from prohibited bank proprietary trading and investment activities. It is important that the final rules not impair the availability of traditional banking services to bank customers, nor impose unnecessary costs on banks where there is no systemic risk or threat to the U.S. financial system. Our members also will need to have sufficient time and opportunity to transition their affected activities to conform with the requirements of the final rules in a manner that is not disruptive to customers or to the economy.

As part of their rulemaking review process, therefore, we request that the Agencies consider the following in connection with the final rules:

- **Full Explanation of Agencies' Reasons for Adopting Provisions.** In order to provide clarity and direction for banks and other entities subject to the Volcker Rule, the Agencies should include in the preamble to the final rules a complete and comprehensive explanation of the Agencies' reasons for adopting the particular language and approach of each provision. The preamble further should include, for each provision where consensus among the Agencies was not reached, a description of each Agency's position,

especially if differences remain in the Agencies' views. This will allow banking entities the opportunity to see how challenging interpretive issues were considered and resolved, and thereby help promote compliance planning efforts.

- **Volcker Rule Summary Compliance Guide for Community Banks.** The proposed rules would have a major – and we believe unnecessary – impact on community banks and other banks where there is small likelihood of systemic risk. We reaffirm our view that the final rules should not have that reach. Because of that possibility under the proposed rules, the final rules should include a separate section summarizing the compliance requirements for community banks. Review and analysis of the final rules will be time-consuming and labor intensive for every bank, regardless of size or activity. Of course, all institutions would benefit if the Agencies were to provide handbooks on Volcker Rule examination guidance. Beyond this, however, community banks would need a joint Agency guide that would clearly show any areas in which the Volcker Rule will impact community bank activities and which lays out a common-sense “roadmap” for regulatory compliance.

For example, we note the emphasis in the proposed rules on promoting financial institutions' role to provide liquidity. Proprietary trading is permitted for “market making,” “liquidity facilities,” and “for the benefit of customers.” These are terms with which applied to community and smaller regional banks under the Volcker Rule might not be familiar, or which may be understood differently from the way in which the Agencies understand the terms. To the extent that these terms are applied to community and regional banks, these banks should be given sufficient explanation of how and why they apply in such a way that adequate compliance programs can be prepared.

- **Two-Year Compliance Period from Final Rules' Effective Date.** In April 2012, the Federal Reserve issued interpretive guidance on the Volcker Rule, which included a two-year conformance period from the effective date of the Volcker Rule (i.e., July 21, 2012).¹ The clock has been running since that date, however, reducing compliance time without issuance of the final rules with which banks will be expected to comply. The Federal Reserve, moreover, has reserved the right in its guidance to extend the conformance period. Consequently, in order to permit banks the appropriate amount of time to review, understand, and come into compliance with the Final Rules, the Federal Reserve should re-commence the two-year conformance period no sooner than beginning from the effective date of the Final Rules.
- **No Adverse Regulatory Action for Good-Faith Compliance.** Given their multiple levels of detail and complexity, the final rules will no doubt prompt future, ongoing guidance from the Agencies. In the meantime, banking entities will be left on their own to interpret a new body of potentially complicated rules, a number of which may well be subject to multiple and possibly conflicting interpretations, given the number of Agencies involved. The final rules, therefore, should *expressly* include a “good-faith” compliance provision, whereby no enforcement action or other adverse regulatory action – in

¹ Board of Governors of the Federal Reserve System, Statement of Policy Regarding the Conformance Period for Entities Engaged in Prohibited Trading or Private Equity Fund or Hedge Fund Activities (April 19, 2012).

connection with any non-willful violation of the final rules – will be taken by any of the Agencies during the two-year conformance period, provided that the banking entity can demonstrate reasonable efforts at good-faith compliance with the final rules. This is an approach similar to that adopted by the Office of the Comptroller of the Currency for the Section 165 stress testing requirements for the \$10-\$50 billion banks whereby the examinations in 2013 and 2014 will be more consultative than evaluative.

We appreciate your consideration of these proposed incorporations into the preamble and text of the final rules. If we can be of any further assistance, please feel free to contact the undersigned at 202-663-5325.

Sincerely,



Cecelia A. Calaby
Senior Vice President
Center for Securities, Trust and Investments