THIS RELEASE WAS APPROVED BY THE COMMISSION AND IS BEING ISSUED IN DRAFT FORM WHILE PENDING REVIEW AT THE OFFICE OF MANAGEMENT AND BUDGET OF THE "MAJOR RULE ANALYSIS" UNDER THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT.

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 44
Docket No. OCC-2014-0003
RIN: 1557-AD79

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
12 CFR Part 248
Docket No. R-1480
RIN: 7100 AE-11

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 351
RIN: 3064-AE11

SECURITIES AND EXCHANGE COMMISSION
17 CFR Part 255
Release No. [_____]
RIN: 3235-AL52

COMMODITY FUTURES TRADING COMMISSION
17 CFR Part 75
RIN: 3038-AE13

TREATMENT OF CERTAIN COLLATERALIZED DEBT OBLIGATIONS BACKED PRIMARILY BY TRUST PREFERRED SECURITIES WITH REGARD TO PROHIBITIONS AND RESTRICTIONS ON CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND PRIVATE EQUITY FUNDS

AGENCIES: Office of the Comptroller of the Currency, Treasury ("OCC"); Board of Governors of the Federal Reserve System ("Board"); Federal Deposit Insurance Corporation ("FDIC"); Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC").

ACTION: Interim final rule.

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SUMMARY: The OCC, Board, FDIC, CFTC and SEC (individually, an "Agency," and collectively, "the Agencies") are each adopting a common interim final rule that would permit banking entities to retain investments in certain pooled investment vehicles that invested their offering proceeds primarily in certain securities issued by community banking organizations of the type grandfathered under section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The interim final rule is a companion rule to the final rules adopted by the Agencies to implement section 13 of the Bank Holding Company Act of 1956 ("BHC Act"), which was added by section 619 of the Dodd-Frank Act.

DATES: Effective date: The interim final rule is effective on April 1, 2014. Comment date: Comments on the interim final rule should be received on or before 30 days after publication in the Federal Register.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities with Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds" to facilitate the organization and distribution of comments among the Agencies.

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities with Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal – "Regulations.gov":** Go to http://www.regulations.gov. Enter "Docket ID OCC-2014-0003" in the Search Box and click "Search." Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **E-mail:** regs.comments@occ.treas.gov.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

- **Fax:** (571) 465-4326.

- **Hand Delivery/Courier:** 400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID "OCC-2014-0003" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- **Viewing Comments Electronically:** Go to http://www.regulations.gov. Select "Document Type" of "Public Submissions," and in the "Enter Keyword or ID Box," enter Docket ID "OCC-2014-0003," and click "Search." Comments can be filtered by Agency using the filtering tools on the left side of the screen.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Docket: You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System:

You may submit comments, identified by Docket No. R-1480 and RIN 7100 AE-11, by any of the following methods:

- **Agency Web Site**: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- **Federal eRulemaking Portal**: http://www.regulations.gov. Follow the instructions for submitting comments.

- **E-mail**: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

- **Fax**: (202) 452-3819 or (202) 452-3102.

- Mail: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN number, by any of the following methods:

- **Agency Web Site**: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web Site.

- **E-mail:** Comments@fdic.gov. Include the RIN number 3064-AE11 on the subject line of the message.

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

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064-AE11 for this rulemaking. All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal/propose.html, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-I002, Arlington, VA 22226 by telephone at 1 (877) 275-3342 or 1 (703) 562-2200.

Commodity Futures Trading Commission: You may submit comments, identified by RIN number 3038-AE13 by any of the following methods:

- **Agency Web Site**: http://comments.cftc.gov.

- **Mail:** Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- **Hand Delivery:** Same as mail above.

- **Federal eRulemaking Portal:** http://www.regulations.gov. Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in § 145.9 of the CFTC's regulations (17 CFR 145.9).

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Securities and Exchange Commission: You may submit comments by the following method:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/interim-final-temp.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number [____] on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number [____]. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Internet website (http://www.sec.gov/rules/ interim-final-temp.shtml). Comments are also available for website viewing and printing in the SEC's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

OCC: Tiffany Eng, Attorney, Legislative and Regulatory Activities Division, (202) 649-5490,Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Christopher M. Paridon, Counsel, (202) 452-3274, or Anna M. Harrington, Senior Attorney, (202) 452-6406, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, bbean@fdic.gov, or Karl R. Reitz, Chief, Capital Markets Strategies Section, kreitz@fdic.gov, Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; Michael B. Phillips, Counsel, mphillips@fdic.gov, or Gregory S. Feder, Counsel, gfeder@fdic.gov, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

CFTC: Erik Remmler, Deputy Director, Division of Swap Dealer and Intermediary Oversight ("DSIO"), (202) 418–7630, eremmler@cftc.gov; Paul Schlichting, Assistant General Counsel, Office of the General Counsel ("OGC"), (202) 418-5884, pschlichting@cftc.gov; Mark Fajfar, Assistant General Counsel, OGC, (202) 418-6636, mfajfar@cftc.gov; Michael Barrett, Attorney-Advisor, DSIO, (202) 418-5598, mbarrett@cftc.gov, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SEC: W. Danforth Townley, Attorney Fellow, Jane H. Kim or Brian McLaughlin Johnson, Senior Counsels, Division of Investment Management, (202) 551-6787,
U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Section 619 of the Dodd-Frank Act added a new section 13 to the BHC Act (codified at 12 U.S.C. 1851) that generally prohibits banking entities from engaging in proprietary trading and from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund. These prohibitions are subject to a number of statutory exemptions, restrictions and definitions.

Section 13 of the BHC Act expressly authorizes the Board, OCC, FDIC, CFTC, and SEC to issue implementing regulations. Each Agency issued a common final rule implementing section 619 that becomes effective on April 1, 2014 ("Final Rule"). [1]

[1] The Final Rule will be codified at 12 CFR part 44 (OCC), 12 CFR part 248 (FRB), 12 CFR part 351 (FDIC), 17 CFR part 75 (CFTC), and 17 CFR part 255 (SEC). The Final Rule defines a covered fund as an issuer that would be an investment company as defined in the Investment Company Act of 1940 (the "Investment Company Act") but for section 3(c)(1) or 3(c)(7) of that Act, and also includes and excludes

A separate provision of the Dodd-Frank Act, section 171, generally provides that trust preferred and certain other securities issued by depository institution holding companies must be phased-out of such companies' calculation of regulatory capital for purposes of determining Tier 1 capital. However, section 171 further provides for the permanent grandfathering of debt and equity securities issued before May 19, 2010, by any depository institution holding company that had total consolidated assets of less than $15 billion as of December 31, 2009, or was a mutual holding company on May 19, 2010 ("community banking organizations"). These grandfathered capital-raising instruments in the form of trust preferred securities or subordinated debt securities (collectively referred to herein as "TruPS") were issued by community banks frequently through securitization pools ("TruPS CDOs") that were formed for the purpose of acquiring these TruPS.

II. Discussion

Section 619 generally prohibits a banking entity from acquiring or retaining any ownership in, or acting as sponsor to, a hedge fund or private equity fund, which are defined under the statute to mean an issuer that would be an investment company, as defined in the Investment Company Act, but for section 3(c)(1) or 3(c)(7) of that Act, or "such similar funds" as the Agencies determine by rule. The Agencies have by separate rule implementing section 619, in relevant part, defined a hedge fund or private equity fund through the term "covered fund" to be any issuer that would be an investment company under the Investment Company Act but for section 3(c)(1) or 3(c)(7) of that Act, with certain exceptions and additions.[2] This definition generally includes pooled investment vehicles, such as many TruPS CDOs, that use 3(c)(1) or 3(c)(7) but do not qualify for another exclusion under the Investment Company Act or the Final Rule.

Section 171 of the Dodd-Frank Act requires, among other things, that the appropriate Federal banking agencies establish minimum leverage and risk-based capital requirements for insured depository institutions and depository institution holding companies that are not less than the generally applicable capital requirements that were in effect for insured depository institutions as of the date of enactment of the Dodd-Frank Act.[3] The focus of this section on ensuring that depository institutions and their holding companies maintain strong minimum capital levels is one of the key prudential provisions included in the Dodd-Frank Act. Importantly in the current context and as noted above, section 171 specifically permits any

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certain entities. This definition implements the definition of "hedge fund" and "private equity fund" in section 13(h)(2) of the BHC Act. See 12 U.S.C. 1851(h)(2).

[2] See Final Rule § __.10(b)(1(i).

[3] See 12 U.S.C. 5371.

community banking organization to continue to rely for regulatory capital purposes on any debt or equity instruments issued before May 19, 2010.[4]

A number of community banking organizations have recently expressed concern that the Final Rule conflicts with the Congressional determination under section 171(b)(4)(C) of the Dodd-Frank Act to grandfather TruPS issued as of May 19, 2010, by community banking organizations.[5] Many community banks and other market participants maintain that the issuance of TruPS using a pooled investment structure was the only practical way for community banking organizations to avail themselves of TruPS for regulatory capital purposes. Accordingly, the TruPS CDO structure was the tool that gave effect to the use of TruPS as a regulatory capital instrument prior to May 19, 2010 and was part of the status quo Congress preserved with the grandfathering provision of section 171. In order to avoid imposing restrictions that could adversely affect the TruPS CDO market in a manner that could undercut the grandfathering provisions that Congress provided in section 171, the Agencies believe that certain TruPS CDOs should be a permitted investment for all banking entities under section 619 of the Dodd-Frank Act.

The Agencies have determined to act together to adopt an interim final rule. This new interim final rule permits a banking entity to retain an interest in, or to act as sponsor (including as trustee) of, an issuer that is backed by TruPS so long as (i) the issuer was established before May 19, 2010; (ii) the banking entity reasonably believes that the offering proceeds received by the issuer were invested primarily in Qualifying TruPS Collateral (as defined below); and (iii) the banking entity's interest in the vehicle was acquired on or before December 10, 2013 (unless acquired pursuant to a merger or acquisition). Under the interim final rule, a "Qualifying TruPS Collateral" is defined by reference to the standards in section 171(b)(4)(C) to mean any trust preferred security or subordinated debt instrument issued prior to May 19, 2010 by a depository institution holding company that, for any reporting period during the 12 months immediately preceding the issuance of such instrument, had total consolidated assets of less than $15,000,000,000 or issued prior to May 19, 2010 by a mutual holding company. The Agencies have required that an issuer must have invested primarily in Qualifying TruPS Collateral to meet the requirements of the interim final rule; this is intended to cover those securitization vehicles that have invested a majority of their offering proceeds in Qualifying TruPS Collateral. The

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[4] See 12 U.S.C. 5371(b)(4)(C).

[5] The banking agencies recently provided guidance on the application of the Final Rule to TruPS CDOs. See FAQ Regarding Collateralized Debt Obligations Backed by Trust Preferred Securities under the Final Volcker Rule, *available at* http://www.fdic.gov/news/news/press/2013/pr13123a.pdf. See also Statement regarding Treatment of Certain Collateralized Debt Obligations Backed by Trust Preferred Securities under the Rules implementing Section 619 of the Dodd-Frank Act, available at http://www.fdic.gov/news/news/financial/2013/fil13062.html (the "Statement").

interim final rule also provides clarification that the relief relating to these TruPS CDOs also extends to activities of a banking entity acting as a sponsor for these securitization vehicles since acting as a sponsor might otherwise be subject to the prohibitions or requirements of section 619. For the avoidance of doubt, notwithstanding clause (iii) above, a banking entity may act as a market maker with respect to the interests of an issuer that qualifies for the exemption, in accordance with the applicable provisions of §§ ___.4 and ___.11 of the Final Rule. The Agencies note that nothing in the interim final rule limits or restricts the ability of the appropriate agency to place limits on any activity conducted or investment held pursuant to the exemption in a manner consistent with their safety and soundness or other authority to the extent the agency has such authority.

The Agencies believe that the approach adopted in the interim final rule appropriately reconciles the policies of section 619 of the Dodd-Frank Act with its companion provision in section 171 of the Dodd-Frank Act and have attempted to encompass the class of instruments Congress intended to grandfather while limiting the scope of the interim final rule in keeping with the objectives of section 619. The Agencies have included a "reasonable belief" standard since the relevant CDOs were structured and made their investments many years ago and all of the relevant documentation may not be readily available to banking entities.[6] Based on discussions with major market participants involved in structuring and offering TruPS CDOs, the Agencies expect that the interim final rule will cover all of the issuers that were formed primarily for the purpose of investing in Qualifying TruPS Collateral. The Agencies request comment regarding whether a different approach is necessary to accomplish this objective.

III. Request for Comment

The Agencies invite comment from all members of the public regarding all aspects of the interim final rule. The request for comment is limited to this interim final rule. The Agencies request comment on whether the interim final rule is consistent with the purposes of sections 619 and 171 of the Dodd-Frank Act.

The Agencies will carefully consider all comments that relate to this interim final rule.

IV. Administrative Law Matters

A. Interim Final Rule

[6] To minimize the burden of applying the interim final rule, the Board, the FDIC and the OCC will make public a non-exclusive list of issuers that meet the requirements of the interim final rule. A banking entity may rely on the list published by the Board, the FDIC and the OCC.

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.[7] This requirement does not apply, however, when the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[8]

After the Agencies' adoption of the Final Rule implementing section 619, a number of community banking organizations reached out to the Agencies to express concerns about the Final Rule and, in particular, the implications for financial statement purposes relating to the banking organizations' holdings resulting from their previous capital-raising efforts involving TruPS issued by banking organizations for regulatory capital purposes. The Agencies requested comment in the Notices of Proposed Rulemaking issued by the Agencies[9] regarding the effects of the definition of covered fund and ownership interests on issuers of asset-backed securities, including the distinctions between debt and equity interests.[10] The Agencies also included a request for comment on trust preferred securities specifically in the context of the proposed rule's permitted activity for underwriting activities.[11] Notwithstanding such requests, the Agencies believe that the recently expressed concerns regarding the impact of including TruPS CDOs in the definition of covered fund or on investments by community banks in TruPS CDOs were not included in comments to the Agencies during the comment process.

The Agencies have considered carefully these recently identified concerns, particularly in light of the provisions in section 171 of the Dodd-Frank Act and the concerns raised by community banking organizations regarding the consistency of treatment regarding TruPS issued by community banking organizations, and grandfathered under section 171, and the TruPS CDOs that were used as capital access vehicles for the TruPS issuances. In light of the significant concerns expressed, the Agencies believe there is an urgent need to act in light of the uncertainty expressed by some community banking organizations about whether the Final Rule will require them to dispose of their holdings of TruPS CDOs, which they contend could have an immediate effect on their financial statements and their bank regulatory capital. The OCC, Board, FDIC and SEC noted in the Statement that their accounting staffs believe that, "consistent with generally accepted accounting principles, any actions in January 2014 that occur before the issuance of December 31, 2013 financial reports, including the FR Y-9C and the Call Report, should be considered when preparing those financial reports." The Agencies' decision in this interim final rule to permit a banking entity to retain certain TruPS CDOs should be factored into

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[7] See 5 U.S.C. 553(b).

[8] Id.

[9] See 76 FR 68,846 (Nov. 7, 2011) ("joint Notice of Proposed Rulemaking"); 77 FR 8332 (Feb. 14, 2012) ("CFTC Notice of Proposed Rulemaking").

[10] See Questions 227-240 of the joint Notice of Proposed Rulemaking.

[11] See Question 78 of the joint Notice of Proposed Rulemaking.

the accounting analysis. Accordingly, the Agencies believe it necessary to take action at this time before banking entities are required to file their next financial reports.[12]

Accordingly, for the reasons discussed throughout, the Agencies find good cause to act immediately to adopt this rule on an interim final basis without prior solicitation of comment. With this interim final rule and request for comment, the Agencies are not reopening the final rules that have previously been adopted under section 619.

B. Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act (Pub L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies believe that the interim final rule is written plainly and clearly, and request comment on whether there are ways the Federal banking agencies can make any final rule easier to understand.

C. Paperwork Reduction Act

The Agencies note that the new interim final rule does not create new regulatory obligations for banking entities, and therefore does not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[13] nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, the Agencies did not submit the interim final rule to the Office of Management and Budget for review in accordance with the PRA. The Agencies request comment on their conclusion that there are no collections of information.

D. Regulatory Flexibility Act

The interim final rule applies to banking entities that may have ownership interests in TruPS CDOs. The requirements of the Regulatory Flexibility Act are not applicable to this interim final rule.[14] Nonetheless, the Agencies observe that in light of the way the interim final rule operates, they believe that, with respect to the entities subject to the interim final rule and within each Agency's respective jurisdiction, the interim final rule would not have a significant economic impact on a substantial number of small entities. The Agencies request comment on their conclusion that the new interim final rule should not have a significant economic impact on a substantial number of small entities.

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[12] See Statement, supra note 5, stating that the Agencies' intend to address this matter no later than January 15, 2014.

[13] 44 U.S.C. 3501 et seq.

[14] The requirements of the Regulatory Flexibility Act are not applicable to rules adopted under the Administrative Procedure Act's "good cause" exception, *see* 5 U.S.C. 601(2) (defining "rule" and notice requirements under the Administrative Procedure Act).

E. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires a Federal agency to prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The UMRA only applies when the Federal agency issues a general notice of proposed rulemaking. Since this rule is published as an interim final rule, it is not subject to section 202 of the UMRA.

V. Authority: 12 U.S.C. 1851

This interim final rule is issued under section 13 of the Bank Holding Company Act of 1956, as amended (12 U.S. 1851).

Common Text of the Interim Final Rule

Add new § __. 16 to read as follows:

§ __. 16 **Ownership of interests in and sponsorship of issuers of certain collateralized debt obligations backed by trust-preferred securities.**

(a) The prohibition contained in § __.10(a)(1) does not apply to the ownership by a banking entity of an interest in, or sponsorship of, any issuer if:

(1) The issuer was established, and the interest was issued, before May 19, 2010;

(2) The banking entity reasonably believes that the offering proceeds received by the issuer were invested primarily in Qualifying TruPS Collateral; and

(3) The banking entity acquired such interest on or before December 10, 2013 (or acquired such interest in connection with a merger with or acquisition of a banking entity that acquired the interest on or before December 10, 2013).

(b) For purposes of this § ___.16, Qualifying TruPS Collateral shall mean any trust preferred security or subordinated debt instrument issued prior to May 19, 2010 by a depository institution holding company that, as of the end of any reporting period within 12 months immediately preceding the issuance of such trust preferred security or subordinated debt instrument, had total consolidated assets of less than $15,000,000,000 or issued prior to May 19, 2010 by a mutual holding company.

(c) Notwithstanding paragraph (a)(3) above, a banking entity may act as a market maker with respect to the interests of an issuer described in paragraph (a) in accordance with the applicable provisions of §§ ___.4 and ___.11.

(d) Without limiting the applicability of paragraph (a), the Board, the FDIC and the OCC will make public a non-exclusive list of issuers that meet the requirements of paragraph (a). A banking entity may rely on the list published by the Board, the FDIC and the OCC.

End of Common Rule

List of Subjects

12 CFR Part 44

Administrative Practice and procedure, Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Federal savings associations, Federal branches and agencies, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees

12 CFR Part 248

Administrative practice and procedure, Banks and banking, Capital, Compensation, Conflict of interests, Credit, Derivatives, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

12 CFR Part 351

Banks, Banking, Capital, Compensation, Conflicts of interest, Credit, Derivatives, Government securities, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, State nonmember banks, State savings associations, Trusts and trustees.

17 CFR Part 75

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Banks, Banking, Compensation, Credit, Derivatives, Federal branches and agencies, Federal savings associations, Government securities, Hedge funds, Insurance, Investments, National banks, Penalties, Proprietary trading, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Swap dealers, Trusts and trustees, Volcker rule.

17 CFR Part 255

Banks, Brokers, Dealers, Investment advisers, Recordkeeping, Reporting, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency hereby amends chapter I of Title 12, Code of Federal Regulations as follows:

PART 44 – PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

1. The authority for part 44 continues to read as follows:

Authority: 7 U.S.C. 27 *et seq*., 12 U.S.C. 1, 24, 92a, 93a, 161, 1461, 1462a, 1463, 1464, 1467a, 1813(q), 1818, 1851, 3101, 3102, 3108, 5412.

2. Part 44.16 is added as set forth at the end of the Common Preamble.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

Authority and Issuance

For the reasons set forth in the Common Preamble, the Board of Governors of the Federal Reserve System is adding the text of the common rule as set forth at the end of the Common Preamble as Part 248.16 to 12 CFR Chapter II as follows:

PART 248—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS (Regulation VV)

3. The authority for part 248 continues to read as follows:

Authority: 12 U.S.C. 1851, 12 U.S.C. 221 et seq., 12 U.S.C. 1818, 12 U.S.C. 1841 et seq., and 12 U.S.C. 3103 et seq.

4. Part 248.16 is added as set forth at the end of the Common Preamble.

FEDERAL DEPOSIT INSURANCE CORPORATION

Authority and Issuance

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation is adding the text of the common rule as set forth at the end of the Common Preamble as Part 351.16 to chapter III of Title 12, Code of Federal Regulations, as follows:

PART 351 — PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

5. The authority for part 351 continues to read as follows:

Authority: 12 U.S.C. 1851; 1811 *et seq*.; 3101 *et seq*.; and 5412.

6. Part 351.16 is added as set forth at the end of the Common Preamble.

COMMODITY FUTURES TRADING COMMISSION

Authority and Issuance

DRAFT

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission is adding the text of the common rule as set forth at the end of the Common Preamble as Part 75.16 to Chapter I of Title 17, Code of Federal Regulations, as follows:

7. The authority for part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

8. Part 75.16 is added as set forth at the end of the Common Preamble.

SECURITIES AND EXCHANGE COMMISSION

Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission is adding the text of the common rule as set forth at the end of the Common Preamble as Part 255.16 to chapter II of Title 17, Code of Federal Regulations, as follows:

PART 255—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

9. The authority for part 255 continues to read as follows:

Authority: 12 U.S.C. 1851.

10. Part 255.16 is added as set forth at the end of the Common Preamble.

DRAFT