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Sent: Tuesday, May 10, 2011 3:23 PM
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Cc: Richard Coffman <rcoffman@iib.org>
Subject: Volcker Rule Interpretive Issues Relevant to International Banks
Attach: 20110510VolckerInterpLetter_Final.pdf; 20110510DraftVolckerLanguage.pdf

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Ladies and Gentlemen,

The Institute of International Bankers is pleased to share its views in the attached letter on those provisions of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the "Volcker Rule") that permit international banks to engage in proprietary trading, and to sponsor and invest in Private Funds, pursuant to Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act solely outside of the United States (Sections 619(d)(1)(H) and 619(d)(1)(I)). We are also submitting for your consideration suggested regulatory language implementing these provisions.

Please do not hesitate to contact us should you need further assistance in this matter.

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"Advancing the Interests of the International Banking Community in the United States"

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May 10, 2011

By Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20551

Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20520

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Volcker Rule Interpretive Issues Relevant to International Banks

Ladies and Gentlemen:

In anticipation of the coordinated rulemaking implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"),[1] commonly known as the "Volcker Rule," we are writing regarding the key interpretive issues of particular relevance for internationally headquartered banks with U.S. banking operations ("international banks"). The Institute of International Bankers represents internationally headquartered financial institutions from over 35 countries around the world, and our members include international banks that operate branches and agencies, bank subsidiaries and broker-dealer subsidiaries in the United States. International banks provide an important source of credit for U.S. borrowers and enhance the depth and liquidity of U.S. financial markets, and their U.S. operations contribute billions of dollars each year to the economies of major cities across the country through the employment of over 250,000 U.S. citizens and permanent residents and through other operating and capital expenditures.

[1] Codified as new Section 13 of the Bank Holding Company Act of 1956 (the "BHCA"). In this letter we refer to the federal agencies charged with issuing substantive rules implementing the Volcker Rule as the "Agencies."

Overview

The Volcker Rule generally prohibits banking entities, including international banks, from (a) engaging in proprietary trading or (b) sponsoring, or acquiring or retaining an ownership interest in, a "private equity fund" or a "hedge fund" (a "Private Fund"), in each case subject to certain exceptions.[2]

Congress deliberately and appropriately limited the extraterritorial effects of the Volcker Rule by permitting international banks to engage in proprietary trading, and to sponsor and invest in Private Funds, pursuant to Sections 4(c)(9) and 4(c)(13) of the BHCA "solely outside of the United States."[3] Permitting such non-U.S. trading and fund activities of international banks is consistent with the policy objectives of the Volcker Rule, which generally focus on protecting U.S. banks, U.S. financial stability and U.S. taxpayer funds from what Congress deemed to be inappropriate risks. It is also consistent with longstanding principles of international bank supervision, reflected in U.S. federal banking laws and federal banking agencies' regulations and interpretations, which limit unwarranted extraterritorial application of U.S. banking laws and accord appropriate deference to home country bank supervision.

The recommendations outlined below address how the provisions permitting activities conducted by international banks outside the United States and other related aspects of the Volcker Rule should be implemented in order to respect Congress's intent to limit the extraterritorial impact of the Volcker Rule while advancing its policy objectives and appropriately balancing competitive equality issues. Specifically, this letter provides recommendations with respect to:

1. Conduct that is permitted "solely outside of the United States" in Sections 13(d)(1)(H) and (I);

2. The restriction in Section 13(d)(1)(I) on marketing and sales of non-U.S. Private Fund interests to U.S. residents;

3. The prohibition on "covered transactions" with certain Private Funds in Section 13(f);

4. The application of the Volcker Rule to regulated foreign investment companies;

5. The application of the proprietary trading ban to foreign government securities;

6. The application of the Volcker Rule to certain companies in which international banks make investments under other BHCA authorities; and

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[2] BHCA § 13(a)(1).

[3] See BHCA Section 13(d)(1)(H) (proprietary trading) and Section 13(d)(1)(I) (private funds).

7. The application of the Volcker Rule to foreign insurance company affiliates of international banks.

We have included in Appendix A to this letter proposed regulatory language to implement the recommendations described below.

1. Conduct permitted "solely outside of the United States"

Section 13(d)(1)(H) permits proprietary trading conducted by a banking entity pursuant to BHCA Section 4(c)(9) or 4(c)(13), provided that "the trading occurs solely outside of the United States" and the banking entity is not directly or indirectly controlled by a U.S. banking entity (the "Permitted Non-U.S. Trading Provisions"). Section 13(d)(1)(I) permits a banking entity to sponsor, and to acquire or retain an ownership in, a Private Fund pursuant to BHCA Section 4(c)(9) or 4(c)(13) "solely outside of the United States," provided that no ownership interests in the Private Fund are offered for sale or sold to a U.S. resident (the "U.S. Marketing Restriction"), and that the banking entity is not directly or indirectly controlled by a U.S. banking entity (the "Permitted Non-U.S. Fund Provisions" and, together with the Permitted Non-U.S. Trading Provisions, the "Permitted Non-U.S. Trading and Fund Provisions").

Location of Risk and Ultimate Mind and Management

In our view, the analysis of whether proprietary trading, or sponsorship or investment in a fund pursuant to BHCA Section 4(c)(9) or 4(c)(13) occurs "solely outside of the United States" for purposes of the Permitted Non-U.S. Trading and Fund Provisions should focus on where the risk of the activity is held and where the ultimate mind and management for the relevant trading, investment or sponsorship decisions rest. The statutory text focuses on the location of the activities a bank engages in as principal that would incur risk (i.e., trading, investing or sponsoring), and that plain meaning should not be expanded to prohibit any U.S. nexus related to such activity (for example, U.S. securities or U.S. counterparties).[4]

This interpretive approach would be consistent with the Volcker Rule's stated policy objectives—reducing risks to the U.S. banking system and limiting activities conducted by banking entities that have implicit U.S. government (and U.S. taxpayer) support.[5] The risk

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[4] BHCA Section 13(d)(1)(H) permits "proprietary trading . . . provided that the trading occurs solely outside of the United States" (emphasis added). Section 13(d)(1)(I) likewise refers to the "acquisition or retention . . . or the sponsorship of, a [Private Fund] . . . solely outside of the United States" (emphasis added). This contrasts with earlier drafts of the Volcker Rule, in which "solely outside of the United States" modified "investments or activities". See, e.g., The Restoring American Financial Stability Act of 2010, S. 3217, 111th Congress § 619 (as reported by the S. Comm. on Banking, April 29, 2010) (emphasis added). Narrowing the limitations from "activities" to specifically identified actions taken as principal (trading, investment or sponsorship) illustrates Congress's intent to focus on the location of the risk and ultimate mind and management.

[5] See BHCA § 13(b)(1) (requiring the Financial Stability Oversight Council ("FSOC") to conduct a study and make recommendations on how the Volcker Rule's implementation could promote safety and soundness, enhance financial stability, protect taxpayers and consumers from unsafe and unsound practices,

for activities conducted pursuant to the Permitted Non-U.S. Trading and Fund Provisions would be borne by an international bank outside of the United States, and would be subject to the supervision and risk management requirements of the bank's home country regulators. The non-U.S. operations of international banks are not eligible for U.S. federal deposit insurance or other relevant forms of federal support, such as borrowing from the Federal Reserve discount window, thus addressing the risk that the Permitted Non-U.S. Trading and Fund Provisions would result in an inappropriate use of U.S. taxpayer subsidies to support these activities.[6]

Deferring to home country regulation of the non-U.S. trading and non-U.S. fund activities of international banks is also consistent with the intent of Congress to adhere to longstanding principles of international comity and to avoid unwarranted extraterritorial application of the Volcker Rule.[7] Governments and supervisors in other countries may make different judgments about which types of proprietary trading and fund activities banks may conduct and in the Volcker Rule Congress appropriately deferred to home country regulators with respect to activities where the risk and ultimate mind and management are located outside the United States.[8]

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limit the inappropriate transfer of federal subsidies, reduce conflicts of interest, and limit activities that create, or could create, undue risk of loss). See also 156 Cong. Rec. S5894 (daily ed. July 15, 2010) (colloquy between Sen. Merkley and Sen. Levin) (the "Merkley-Levin Colloquy") ("Properly implemented, section 619's limits will tamp down on the risk to the system"); FSOC, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds at 15, 56 (Jan. 18, 2011) (the "FSOC Study") ("[One] purpose of the Volcker Rule is . . . [to] [s]eparate federal support for the banking system from speculative trading activity with the banking entity's own capital").

6 See, e.g., FSOC Study at 46 ("[B]ecause of U.S. extraterritorial regulatory constraints, the statute does not restrict proprietary trading conducted by non-U.S. entities outside the United States. These entities are not eligible for discount window loans or federal depository insurance.").

7 See, e.g., Merkley-Levin Colloquy at S5897 ("[Sections 13(d)(1)(H) and 13(d)(1)(I)] recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law."). See also note 14, discussing how Congress intended the Permitted Non-U.S. Trading and Fund Provisions to be implemented in a manner consistent with the FRB's precedents on non-U.S. activities under the BHCA.

8 Other G-20 countries are actively debating the appropriate regulatory treatment of institutions that combine proprietary/investment banking activities and retail banking. If the Volcker Rule were applied—beyond its plain meaning—to reach international banks' non-U.S. proprietary trading and fund activities, it could result in the imposition of overlapping and inconsistent regulatory regimes on these institutions' non-U.S. operations. See, e.g., U.K. Independent Commission on Banking, Interim Report: Consultation on Reform Options (Apr. 11, 2011) (discussing structural reform options for universal banking that include a "retail ring-fence", the Volcker Rule, full separation of retail and investment/wholesale banking, and operational subsidiarization). For similar reasons, we would generally support limiting the extraterritorial reach of the Volcker Rule as applied to U.S. banks to provide appropriate flexibility to engage in activities outside the United States permitted by host country laws and regulations.

If "solely outside of the United States" were implemented more broadly than its plain meaning and context in the Volcker Rule suggest—for example to prohibit any U.S. nexus, such as investing in U.S. securities or assets or trading with U.S. counterparties—such an approach would lead to significant adverse and unintended consequences for the U.S. economy, markets and financial stability. Among other things, such an approach would restrict the flow of capital from foreign investors to U.S. companies and reduce liquidity in U.S. markets without any benefit to U.S. financial stability or the safety and soundness of U.S. banks. In addition, any such restriction on international banks' home country banking operations would mark a dramatic departure from longstanding approaches to cross-border bank regulation, as well as ongoing efforts among G-20 countries to coordinate an effective response to the recent financial crisis.

In addition to advancing the Volcker Rule's underlying policy goals and congressional intent, interpreting the "solely outside of the United States" requirement based on the location of risk and ultimate mind and management is consistent with longstanding precedents under U.S. banking and securities laws related to activities conducted by non-U.S. entities. For example, prior to the passage of the Gramm-Leach-Bliley Act, the Federal Reserve Board ("FRB") and the Office of the Comptroller of the Currency (the "OCC") repeatedly affirmed that a non-U.S. entity could conduct U.S. dealing activity through an affiliated U.S. bank or broker acting as agent consistent with the Glass-Steagall Act's prohibition on the dealing and underwriting of securities by banks and bank holding companies in the United States, because the dealing activity would be attributed to the foreign affiliate which holds the risk as principal, and not to the U.S. agent.[9] The securities laws have likewise long adhered to the position that when a foreign broker or dealer conducts securities transactions with U.S. persons through a U.S. registered broker-dealer acting as agent, that foreign broker-dealer's operations (including its dealing positions) remain, for regulatory, operational, capital and other purposes, outside of the United States and outside of the U.S. regulatory framework.[10]

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[9] See, e.g., OCC Interpretive Letter 371 (June 13, 1986) (granting Citibank, N.A. permission to acquire Vickers de Costa Securities, Inc. ("Vickers"), a U.S. registered broker-dealer, and concluding that Vickers could continue to conduct brokerage on behalf of foreign subsidiaries of Citicorp and other customers despite the Glass-Steagall Act's prohibition on dealing in securities in the United States because the principal risk of the trades was borne outside of the United States and not by Vickers itself); Security Pacific Corp. (FRB, Apr. 18, 1988) (granting Security Pacific Corp. ("SecPac") permission to acquire control of a U.S. registered broker-dealer and concluding that the broker-dealer could act as a broker for foreign affiliates of SecPac without violating the Glass-Steagall Act's prohibition on dealing in securities in the United States, again focusing on the location of the risk).

[10] Rule 15a-6 under the Securities Exchange Act of 1934 (the "1934 Act") (exempting a foreign broker or dealer from the 1934 Act's registration requirements where such foreign broker or dealer effects transactions outside the United States in securities with U.S. investors through a U.S. registered broker-dealer, subject to certain conditions). See also Security Pacific Corp. (avail. July 7, 1988) (one of several pre-Rule 15a-6 Securities and Exchange Commission ("SEC") no-action letters permitting a bank holding company's U.S.-registered broker-dealer subsidiary to act as agent in executing orders placed by non-U.S.-registered foreign affiliates).

Lastly, this approach should help provide certainty to market participants and facilitate compliance with (and enforcement of) the Permitted Non-U.S. Trading and Fund Provisions. International banks and examiners can readily determine which trading or investment activities are conducted for the account of the head office or a non-U.S. branch or affiliate of an international bank. They can also determine whether any U.S. personnel involved in the activities are acting pursuant to a properly documented agency and services relationship, with limited discretion subject to parameters established and supervised by qualified non-U.S. personnel.

Application to the Permitted Non-U.S. Trading Provisions

Consistent with these principles, so long as the risk and the ultimate mind and management for trading conducted by an international bank are located outside of the United States, and thus the trading originates outside the United States, the Permitted Non-U.S. Trading Provisions should permit an international bank's non-U.S. affiliates to trade (1) in U.S. securities and other assets, and in derivatives with U.S. reference assets, and (2) on U.S. exchanges and/or with U.S. counterparties. The focus of both the plain language and underlying policy of the Non-U.S. Trading Provisions is on the location of the proprietary trading, which refers to activities "as a principal." As a result, non-U.S. banking entities should continue to be permitted to trade as principal from outside the United States as they do today, including using U.S. agents and brokers, which may be the banking entity's U.S. branches and affiliates. Using a U.S. branch or affiliate as agent or broker, rather than an unaffiliated third party, would be consistent with prudent risk management and protecting the confidentiality of trading strategies. It would not affect the location of the principal risk or the location of the ultimate mind and management of the trading operation, all of which would continue to rest with the non-U.S. banking entity. Any discretion granted to the U.S. agent or broker would be appropriately limited pursuant to an agency and services agreement with the non-U.S. affiliate acting as principal.[11]

If the Agencies were to take a different approach—beyond the plain meaning of the Volcker Rule—and prohibit international banks from trading as principal in U.S. securities and other assets, on U.S. exchanges or with U.S. counterparties, the result would be to decrease

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[11] We would expect that any trading discretion granted to an international bank's U.S. affiliate to serve as agent or broker for the bank's non-U.S. trading operations would be appropriately circumscribed by parameters consistent with the conclusion that the U.S. affiliate is acting solely as agent and that the "ultimate mind and management" remain outside of the United States. In all cases, the principal risk of transactions under the arrangement would be borne by a non-U.S. affiliate of the international bank, and such affiliate would retain the power to direct the U.S. affiliate to effect transactions outside the established parameters or to change, modify or repeal any of the parameters. The actions taken by the U.S. affiliate on behalf and for the account of the non-U.S. affiliate would be reviewed regularly by a senior officer of the non-U.S. affiliate in order to monitor the sufficiency of the trading parameters.

We note that a non-U.S. entity that effects trades in the United States for its own account through a U.S. broker or agent with discretionary trading authority under comparable limitations would generally not be considered to be "engaged in trade or business within the United States" for purposes of U.S. federal tax law. See 26 C.F.R. § 1.864-2.

capital and liquidity available in U.S. markets. Requiring international banks to limit their non-U.S. trading to the Volcker Rule's other exceptions (e.g., market making, underwriting, transactions "on behalf of customers") whenever engaging as principal in trades with any U.S. nexus could lead to significant capital flight from the U.S. economy as international banks shift their trading activities to other venues. Furthermore, prohibiting an international bank from using U.S. agents and brokers when trading as principal would shift employees from U.S. operations to foreign offices. This loss of U.S. jobs would come without any offsetting reduction in the risk to the U.S. financial markets or U.S. taxpayers, because, whether or not a U.S. agent or broker is involved in a transaction, the non-U.S. operations of international banks bear the risk of these activities overseas, and these operations are not eligible for U.S. government support.

Permitting such U.S. agent and broker relationships would not prevent U.S. banks from competing in the United States on equal terms with international banks with respect to the Volcker Rule's other permitted activities (e.g., market making, underwriting, transactions "on behalf of customers"). In addition, any trading conducted by an international bank as principal in the United States—where the risk and ultimate mind and management reside in a U.S. office or subsidiary of the international bank—will be subject to the same constraints that apply to U.S.-headquartered banking organizations.

Consequently, implementing the Volcker Rule according to its plain meaning would protect U.S. banking organizations from unfair competition in the United States. The non-U.S. trading that is permitted under the Volcker Rule is consistent with congressional intent, as described above, and represents an appropriate limit on the extraterritorial application of the Volcker Rule.

In summary, we would propose that permissible proprietary trading conducted pursuant to BHCA Sections 4(c)(9) or 4(c)(13) should be considered "solely outside of the United States" for purposes of the Permitted Non-U.S. Trading Provisions if:

(i) the banking entity engaged as principal in the proprietary trading:

(a) is, or is controlled by, a "qualifying foreign banking organization" ("QFBO") under the FRB's Regulation K;[12]

(b) is not, and is not controlled by, a banking entity that is organized under the laws of the United States or of one or more States;

(c) is directly or indirectly subject to prudential standards evaluated by, and subject to the oversight of, the QFBO's home country

[12] In order to qualify as a QFBO, an international bank must demonstrate, based on specific quantitative tests in Regulation K, that more than half of its business is banking, and more than half of its banking business is outside the United States. See 12 C.F.R. § 211.23(a).

supervisor or other applicable foreign government authority outside the United States;

(ii) the proprietary trading positions as principal (including financial obligation and ownership) are held, reported and maintained outside the United States;

(iii) any entity in the United States that acts as broker, agent, adviser or intermediary for an international bank conducts any such activities pursuant to the international bank's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the international bank (acting through one or more of its senior officers) outside the United States; and

(iv) the activity is otherwise permissible under Sections 4(c)(9) or 4(c)(13) of the BHCA as implemented by the FRB, including the FRB's Regulation K.[13]

Application to the Permitted Non-U.S. Fund Provisions

Funds organized and sponsored outside of the United States frequently rely on Section 3(c)(1) and/or Section 3(c)(7) of the Investment Company Act of 1940 (the "1940 Act") to address potential acquisitions of fund interests by U.S. persons, even when a fund is not initially offered to such persons. As a result, the Permitted Non-U.S. Fund Provisions are a critical part of the Volcker Rule that preserve the ability of international banks to invest in or sponsor funds organized outside of the United States.

As with the Permitted Non-U.S. Trading Provisions discussed above, "solely outside of the United States" for purposes of the Permitted Non-U.S. Fund Provisions should be interpreted to refer to the location of the risk of the transaction and the location of the ultimate mind and management for the decision to sponsor or invest in a Private Fund. Under this approach, an international bank should be permitted to invest in or sponsor a non-U.S. Private Fund so long as the following conditions are satisfied:

(i) the banking entity that acquires or retains an ownership interest in, or sponsors, the Private Fund:

(a) is, or is controlled by, a QFBO;

(b) is not, and is not controlled by, a banking entity that is organized under the laws of the United States or of one or more States;

[13] 12 C.F.R. pt. 211. The FRB's Regulation K imposes substantive restrictions on the extent to which an international bank's non-U.S. affiliates can engage in nonbanking business in the United States. See 12 C.F.R. § 211.23(f).

(c) is directly or indirectly subject to prudential standards evaluated by, and subject to the oversight of, the QFBO's home country supervisor or other applicable foreign government authority outside the United States;

(ii) the international bank's Private Fund ownership interests are held, reported and maintained outside the United States;

(iii) in the case of a Private Fund sponsored or controlled by the international bank, the Private Fund is organized under the laws of a jurisdiction outside the United States;

(iv) the decision to acquire or retain an ownership interest in, or sponsor, the Private Fund is made pursuant to the international bank's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the international bank (acting through one or more of its senior officers) outside the United States;

(v) the international bank and its affiliates and agents do not sell, or offer for sale, to a U.S. resident any ownership interest in the Private Fund at any time after the end of the applicable conformance period; and

(vi) the activity is otherwise permissible under Sections 4(c)(9) or 4(c)(13) of the BHCA as implemented by the FRB, including the FRB's Regulation K.

Applying these principles, an international bank would generally be able to sponsor and invest in a non-U.S. Private Fund that makes investments in portfolio companies, securities or assets globally (including in the United States) and utilizes a U.S. adviser or subadviser, so long as the conditions described above are satisfied.

This approach would properly separate the risks presented by the international bank's Private Fund activities outside the United States from the U.S. banking system and U.S. government support. Focusing on the location of the risk and the ultimate mind and management with respect to the decision to sponsor or invest in a non-U.S. fund would also appropriately implement Congress's intention to avoid unwarranted U.S. limitations on Private Fund activities conducted by non-U.S. entities outside of the United States.[14] In addition, the U.S. Marketing

[14] Congress intended the Agencies to implement the Permitted Non-U.S. Trading and Fund Provisions in a manner consistent with past FRB precedents under the BHCA. See, e.g., 156 Cong. Rec. S5889-S5890 (daily ed. July 15, 2010) (statement of Sen. Hagan) ("For consistency's sake, I would expect that, apart from the U.S. marketing restrictions, [Section 13(d)(1)(I)] will be applied by the regulators in conformity with and incorporating the Federal Reserve's current precedents, rulings, positions, and practices under sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act so as to provide greater certainty and utilize the established legal framework for funds operated by bank holding companies outside of the United States.").

Restriction will prevent international banks that sponsor Private Funds from having an unfair advantage in competing with U.S. banks for U.S. investors.

2. Implementation of the U.S. Marketing Restriction

The Permitted Non-U.S. Fund Provisions permit international banks to sponsor and invest in non-U.S. Private Funds, provided that, among other conditions, "no ownership interest in such [Private Fund] is offered for sale or sold to a resident of the United States." This restriction is designed to prevent the Permitted Non-U.S. Fund Provisions, which Congress intended to limit the extraterritorial effects of the Volcker Rule, from being used to market and sell Private Fund interests in the United States. Consistent with this purpose, the Agencies should interpret the U.S. Marketing Restriction in a manner that avoids unwarranted and unintended effects on international banks' ability to operate their own funds and invest in third-party funds outside of the United States. The following proposed approaches are designed to implement the plain meaning of the U.S. Marketing Restriction and avoid the severe disruptions in such non-U.S. activities that could result from an overbroad interpretation of the U.S. Marketing Restriction.

Definition of "U.S. Resident"

Neither the Volcker Rule nor the BHCA (to which the Volcker Rule is added) defines "resident of the United States." In the absence of an applicable definition, we suggest that the Agencies adopt the definition of "U.S. person" in the SEC's Regulation S, which was promulgated by the SEC to govern offers and sales of securities made outside the United States without registration under the Securities Act of 1933.[15] Regulation S generally looks to the residence of an individual to determine whether the individual is a U.S. person, treats legal partnerships and corporations as U.S. persons if they are organized or incorporated in the United States, and classifies trusts by reference to the residence of the trustee.[16] Regulation S provides an established, workable framework for limiting the marketing and sale of securities in the United States, one that is already familiar to Private Funds sponsors due to their existing compliance obligations under the securities laws.[17]

Applying the Regulation S definition, international banks should be permitted, consistent with the Permitted Non-U.S. Fund Provisions, to sell non-U.S. Private Fund interests to all natural persons (including U.S. citizens) residing outside the United States and to the foreign subsidiaries of U.S. companies, provided that the foreign subsidiary was not established

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15 See 17 C.F.R. § 230.901-905.

16 See id. § 230.902(k).

17 This approach would also be consistent with the SEC's proposal to adopt the Regulation S definition of "U.S. person" in its rules implementing the private fund advisor registration provisions in Title IV of Dodd-Frank. See Securities and Exchange Commission, Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, 75 Fed. Reg. 77190, 77209 (proposed Dec. 10, 2010).

for purposes of evading these geographic restrictions and the other terms of the exception are met. This will protect U.S. banking organizations from unfair competition in the United States, while minimizing interference with the non-U.S. operations of international banks and funds.

Timing and Conformance Considerations

The Permitted Non-U.S. Fund Provisions permit a banking entity to sponsor, or acquire or retain interests in, non-U.S. Private Funds in circumstances where "no ownership interest . . . is offered for sale or sold to [U.S. residents]".[18] The Agencies should confirm in their rulemaking that compliance with this restriction will be required, as with other Volcker Rule activity restrictions, at the end of the conformance period (the "Conformance Date"). As a result, a banking entity could not sponsor, or acquire or retain an interest in, a non-U.S. Private Fund if any prohibited marketing and/or sales of the fund to U.S. residents occur after the Conformance Date.

Market participants are currently relying on the plain language of the statute to conclude that banking entities will be able to continue to sponsor and invest in funds that comply with the Permitted Non-U.S. Fund Provisions so long as any prohibited offers or sales to U.S. investors cease by the Conformance Date. In other words, so long as the marketing of the non-U.S. Private Fund conforms to the U.S. Marketing Restriction by the Conformance Date, an international bank may continue to sponsor or invest in the non-U.S. Private Fund. The plain language of the statute precludes a fund that "is" offered or sold to U.S. residents from relying on the Permitted Non-U.S. Fund Provisions, not a fund that "was" or ever "has been" offered or sold to U.S. residents.

A contrary approach—one that focuses on whether a fund ever "had been" offered or sold to U.S. residents to measure compliance with the Permitted Non-U.S. Fund Provisions—would not only be inconsistent with the plain language of the Volcker Rule but would result in illogical and, we believe, unintended results. International banks would be required to divest non-U.S. Private Funds based on sales activities conducted before the compliance deadline for the Volcker Rule. Such a result would be unfair, and we do not believe it would be an intended consequence of the U.S. Marketing Restriction, which was designed to prevent international banks from gaining an inappropriate competitive advantage over U.S. institutions by selling their non-U.S. Private Funds to U.S. residents after compliance with the Volcker Rule is required.

Because of the importance of this issue for international banks' current fundraising activities, we would respectfully request that the Agencies confirm our understanding of the meaning of the U.S. Marketing Restriction—at least in this particular respect—in any advanced notice or notice of proposed rulemaking implementing the Volcker Rule.

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[18] BHCA § 13(d)(1)(I).

Application to Third-Party Funds and Secondary Sales

In order to avoid unreasonable and likely unintended restrictions on an international bank's non-U.S. funds business or investments, the coordinated rulemaking should clarify that the U.S. Marketing Restriction will restrict offers and sales to U.S. residents by an international bank. It should not be interpreted to bar a banking entity from sponsoring or investing in a non-U.S. Private Fund due to any sales of fund interests that are outside the control (or even knowledge) of the banking entity, such as sales conducted by third parties in the secondary market or by a distributor of a third-party fund. Such an interpretation would significantly and unreasonably restrict the non-U.S. investments and operations of international banks. For example:

- An international bank could be prevented from investing in an unaffiliated non-U.S. Private Fund unless the bank could obtain adequate assurances that no investments from U.S. residents have been, or would be, solicited or accepted by the fund, and no transfers to U.S. persons have been, or would be, permitted in the future. In many cases, fund managers would be unwilling to provide such assurances, and it would effectively become impossible for an international bank to make secondary market purchases of securities that did not originally contain such restrictions.

- An international bank that sponsors and sells non-U.S. Private Fund interests to investors outside the United States would be forced to restrict and monitor any secondary sales to prevent sales by investors to U.S. residents.

Applying the U.S. Marketing Restriction to sales by the international bank and not to sales by independent third parties would be consistent with the underlying policy objectives of the Volcker Rule and congressional intent.[19] The U.S. Marketing Restriction should restrict an international bank (and its agents) from marketing to U.S. investors, but should not prohibit the bank from investing in any non-U.S. third-party funds that have one or more U.S. investors.[20] It should also not significantly curtail an international bank's ability to conduct a non-U.S. fund business aimed at non-U.S. investors. Such restrictions would not advance the Volcker Rule's policy objectives and would represent an unnecessary and unreasonable extraterritorial application of the Volcker Rule. They would also present significant compliance challenges, since the activities of third parties outside the control and perhaps knowledge of the banking entity would alter the permissibility of its activities or investments.

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[19] See Merkley-Levin Colloquy at S5897 ("[The exemption] prohibit[s] a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.") (emphasis added).

[20] Such third-party funds are subject to a separate regulatory scheme governing when, and to what extent, they can be offered or sold to U.S. investors, and there is no policy justification for changing that scheme solely due to a passive investment by an international bank. See 1940 Act §§ 3(c)(1), (7) &7(d).

The Definition of "Ownership Interest"

International banks sell a variety of fund-linked financial products that are in some way based on the performance of a Private Fund. In our view, such products should not be considered "ownership interests" in the underlying fund for purposes of the U.S. Marketing Restriction. We believe that the appropriate implementation of the statutory term "ownership interest" is its plain meaning—an actual ownership interest in a Private Fund itself, including all the rights and privileges that attach to such an interest (e.g., voting rights, rights to the assets in the Private Fund upon dissolution, etc.).

Based on this definition, fund-linked derivative products and other financial instruments that are in some way based on the performance of a Private Fund would not be an "ownership interest." As a result, the sale by an international bank to U.S. residents of a derivative product linked to a non-U.S. Private Fund should not disqualify that underlying fund for purposes of the Permitted Non-U.S. Fund Provisions.

3. Implementation of the Prohibition on "Covered Transactions" with Private Funds

The Volcker Rule prohibits "covered transactions" (as defined in Section 23A of the Federal Reserve Act) between banking entities and the Private Funds they sponsor, advise, manage or organize and offer (the "23A Prohibition"). The text of the 23A Prohibition left open several important interpretive questions that the Agencies will need to address as they develop implementing regulations. For example, if the 23A Prohibition were interpreted to prohibit all covered transactions by an international bank with all of its advised funds, it would reach extensions of credit by an international bank's head office to a fund it sponsors and advises in its home country that has no U.S. nexus at all (no U.S. investors, no U.S. investments, etc.). That result could not have been intended, and we do not believe such an interpretation would be appropriate. In light of this and other ambiguities in the 23A Prohibition, the Agencies necessarily will need to interpret its scope in the context of the Volcker Rule and its policy objectives as they adopt implementing regulations. Below we address two key interpretive issues regarding the geographic reach of the 23A Prohibition.

Transactions with Non-U.S. Private Funds

As reflected in the Permitted Non-U.S. Fund Provisions, Congress intended international banks, acting from outside the United States, to be able to sponsor and invest freely in non-U.S. Private Funds subject only to certain conditions designed to prevent international banks from gaining an unfair competitive advantage over U.S. banking organizations. The 23A Prohibition should be interpreted in light of this framework, which is designed to focus on the activities of banking entities inside the United States while exempting the activities of international banks acting outside of the United States. As a result, the 23A Prohibition should not be interpreted to apply to covered transactions between an international bank, acting from outside of the United States, and a non-U.S. Private Fund in which the international bank can

invest under the Permitted Non-U.S. Fund Provisions. Principles of statutory interpretation, traditional deference to home country bank regulation in this area, and policy considerations each support this conclusion.

First, the Agencies' interpretation of the 23A Prohibition should take into account the presumption against extraterritorial application of U.S. law.[21] Congress must clearly and affirmatively express an intent to apply U.S. law abroad, and it did not do so in the context of the 23A Prohibition. Nothing in the statutory text of the Volcker Rule suggests that non-U.S. Private Fund activities, which are permitted under the Permitted Non-U.S. Fund Provisions, should be limited by the 23A Prohibition. To the contrary, whereas the so-called "de minimis" exception cross-references and specifically requires compliance with the 23A Prohibition, the Permitted Non-U.S. Fund Provisions do not.[22]

Second, Congress has historically and consistently adhered to the principle of deference to home country regulation for the non-U.S. operations of foreign banks that involve credit extensions and other "covered transactions," which are traditionally matters subject to home country risk management standards and requirements. For instance, neither Section 23A itself, nor U.S. lending limits, apply to an international bank's non-U.S. branches.[23]

Third, there would be no policy rationale for prohibiting an international bank from lending to a non-U.S. Private Fund in which the bank could invest freely pursuant to the Permitted Non-U.S. Fund Provisions.

Application to U.S. Private Funds

For similar reasons, transactions between an international bank, acting from outside the United States, and a U.S. Private Fund that the international bank advises or sponsors should be outside the scope of the 23A Prohibition. As noted above, transactions between banks and their affiliates are traditionally matters left to the bank's home country regulation, and Section 23A itself does not regulate transactions between an international bank acting from outside of the United States and its U.S. affiliates.[24] This is consistent with the policy objective of Section 23A and the 23A Prohibition—i.e., protecting the bank (not the affiliate or Private Fund) from risks presented by extensions of credit or other covered transactions.

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21 The Supreme Court recently reaffirmed this principle in Morrison v. National Australia Bank, 130 S. Ct. 2869 (2010).

22 See BHCA §§ 13(d)(1)(G)(iv), (D)(1)(I).

23 See, e.g., 12 C.F.R. § 223.61 (limiting the application of Section 23A and 23B with respect to international banks to transactions between their U.S. branches and agencies and certain affiliates).

24 Regulation W provides a clear example of a statutory structure, consistent with our understanding of the intent of Volcker Rule, where the U.S. branches and agencies of an international bank are subject to U.S. rules limiting lending to certain designated affiliates, but the lending of the bank's non-U.S. branches and agencies is not limited by U.S. law. See id.

4. Application of the Volcker Rule to Regulated Foreign Investment Companies

The Volcker Rule's Private Fund provisions are intended to target "traditional" private equity and hedge funds. In this respect, the definition of Private Funds under the Volcker Rule by reference to Sections 3(c)(1) and 3(c)(7) is generally acknowledged to be overbroad, and the Volcker Rule specifically authorizes the Agencies to grant exemptions in Section 13(d)(1)(J).[25]

In the international context, one category of funds that merits an exemption from the definition of Private Funds is foreign investment companies that engage in public offerings outside of the United States pursuant to home country regulatory requirements. Such investment companies (e.g., UCITS, SICAVs, etc.) are comparable to U.S. mutual funds, which are not subject to the Volcker Rule. Such foreign investment companies may rely on Sections 3(c)(1) and/or 3(c)(7) of the 1940 Act to engage in limited private offerings in the United States, or to avoid the risk that they could inadvertently violate the 1940 Act, but they clearly are not traditional private equity or hedge funds. Indeed, they would be ineligible for Sections 3(c)(1) and 3(c)(7) if they were similarly organized and offered in the United States.

As a result, it will be important in the Agencies' implementing regulations to exempt foreign investment companies that engage in public offerings outside of the United States pursuant to home country regulatory requirements.[26] Not only are such funds not traditional private equity or hedge funds (and therefore not within the intended scope of the Volcker Rule), but it would be illogical for the Volcker Rule to permit banking entities to freely sponsor and invest in a U.S. mutual fund but prohibit banking entities from sponsoring and investing in an otherwise comparable fund outside the United States.

5. Treatment of Non-U.S. Government Securities under the Volcker Rule

Purchases and sales of U.S. government securities are specifically exempted from the Volcker Rule's proprietary trading restrictions. This exemption is based on sound policy judgments regarding the importance of bank trading in U.S. government securities to the safety and soundness of banking organizations, liquidity and demand in relevant markets, and financial stability generally.

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[25] See FSOC Study at 61-62 ("The Council recommends that Agencies carefully evaluate the range of funds and other legal vehicles that rely on the exclusions contained in section 3(c)(1) or 3(c)(7) and consider whether it is appropriate to narrow the statutory definition by rule in some cases."). See also 156 Cong. Rec. H5226 (daily ed. June 30, 2010) (colloquy between Rep. Frank and Rep. Himes) (discussing the "very broad Investment Company Act approach to define [Private Funds], which could technically apply to lots of corporate structures"); 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (colloquy between Sen. Dodd and Sen. Boxer) (discussing the intent to exclude venture capital funds).

[26] At a minimum, any fund that is traded on an exchange outside of the United States should not be treated as a Private Fund.

In contrast, the Volcker Rule does not explicitly exempt similar types of non-U.S. government securities. In our view, strong policy justifications support adding a regulatory exemption for appropriately defined securities of non-U.S. governments pursuant to the Agencies' exemptive authority under Section 13(d)(1)(J). In the absence of Section 939A of Dodd-Frank, we would have recommended that the regulatory exemption could be limited to investment-grade non-U.S. government securities. Taking into account Section 939A, we would suggest that the exemption be limited to securities that are investment grade or, following implementation of Section 939A, meet comparable measures of credit risk, some of which we understand may be developed by the Agencies for other supervisory and regulatory purposes in response to Section 939A.

Adopting an appropriate regulatory exemption for trading in non-U.S. government securities by both U.S. and international banks would promote safety and soundness of U.S. and international banking organizations and would protect U.S. financial stability, the preconditions for granting an exemption under Section 13(d)(1)(J). It would also recognize the importance to international banks of being able to trade freely in home country and other non-U.S. government securities both inside and outside of the United States, and avoid what would otherwise be unnecessary disruptions to U.S. and international banks' trading operations.

Indeed, a failure to exempt such securities from the scope of the Volcker Rule could cause significant international controversy, as the decrease in liquidity in those instruments could negatively affect the issuing governments and hurt the safety and soundness of the U.S. and international banks holding the securities.

6. Application of the Volcker Rule to Certain Non-U.S. Commercial Companies

The Volcker Rule definition of "banking entity" includes any "subsidiary" of the parent bank holding company or international bank. Due to the broad definition of "subsidiary" in the BHCA, the Volcker Rule's definition of "banking entity" (and therefore its scope), is overbroad in certain respects in relation to its policy objectives, which are focused on U.S. safety and soundness and financial stability.[27] When considering the appropriate scope of the term "banking entity" in the international context, the Agencies should take into account certain specific BHCA authorities that permit international banks to invest in companies outside the United States and Congress's intent to limit the extraterritorial application of the Volcker Rule.

Although the BHCA's activity and investment restrictions potentially apply to an international bank's subsidiaries on a global basis, the extraterritorial impact of that broad scope is deliberately limited by specific authorities in the BHCA. For example, international banks are authorized under Section 2(h)(2) of the BHCA and Section 211.23(f)(5) of the FRB's Regulation

[27] In the FSOC Study, after highlighting examples of entities that might be inappropriately included in the statutory definition of banking entity, the FSOC recommended that the Agencies "consider carefully the impact of certain [BHCA] definitions on the Volcker Rule's definition of 'banking entity' and implement that term in a way that avoids results that Congress clearly did not intend." FSOC Study at 69.

K to make controlling investments in non-U.S. commercial companies, subject to extensive restrictions ("2(h)(2) Companies"). These restrictions include requirements that the investing bank qualify as a QFBO, restrictions on the nature and relative size of the target company's U.S. operations, prohibitions on engaging in financial activities in the United States, lending and cross-marketing restrictions, etc. While limited, this authority recognizes that international banks may make such investments under applicable home country laws and regulations, and it provides an important limitation on the extraterritorial reach of the BHCA.

Controlling investments by international banks in 2(h)(2) Companies should not require those target commercial companies to become "banking entities" subject to the Volcker Rule. Although 2(h)(2) Companies may be "subsidiaries" of an international bank as defined in the BHCA (and therefore "banking entities" under the statutory definition in the Volcker Rule), in our view they are clearly outside the intended scope of the Volcker Rule from a policy perspective. Such companies are not a part of an international bank's operations, just as commercial portfolio companies held under a bank holding company's merchant banking authority are not treated as part of the bank holding company's operations for BHCA purposes.[28] If the Volcker Rule were applied to these non-U.S. commercial companies, it would represent an unnecessary and unintended departure from longstanding U.S. supervisory and regulatory approaches to such investments. For these reasons, we recommend that 2(h)(2) Companies not be treated as banking entities as the Agencies develop implementing regulations under the Volcker Rule.[29]

7. Application of the Volcker Rule to Foreign Insurance Company Affiliates

We would suggest that the Agencies confirm in their implementing regulations that foreign insurance company affiliates of international banks (and U.S. banks) are covered by the provisions of the Volcker Rule permitting activities conducted by regulated insurance companies directly engaged in the business of insurance.[30] The relevant exemption refers to "regulated insurance companies" and to activities that are conducted in compliance with the laws and regulations of the state "or jurisdiction" in which the insurance company is domiciled. As a result, both U.S. and non-U.S. insurance companies should be eligible for the exemption (assuming the other requirements of the exemption are met), and the Agencies' implementing regulations should reflect the scope of these permitted insurance company activities in that regard.

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[28] One example of the potential overbreadth of "banking entity" cited by the FSOC Study was commercial companies indirectly controlled by a banking entity pursuant to merchant banking authority. For similar reasons, we are also of the view that commercial companies held pursuant to a financial holding company's merchant banking authority under BHCA Section 4(k)(4)(H) and (I) should not be considered "banking entities" for purposes of the Volcker Rule.

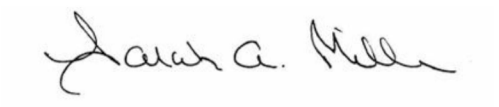
[29] Similar concerns arise with respect to international banks' minority investments in non-U.S. financial companies under Section 4(c)(9) of the BHCA, a subject we plan to address separately as the rulemaking process proceeds.

[30] See BHCA § 13(d)(1)(F).

* * *

We appreciate your consideration of our recommendations, and we look forward to continuing to provide comments to the Agencies as the coordinated rulemaking proceeds. If we can answer any questions or provide any further information, please contact the undersigned (646-213-1147, smiller@iib.org) or our General Counsel, Richard Coffman (646-213-1149, rcoffman@iib.org).

Very truly yours,



Sarah A. Miller
Chief Executive Officer

Appendix A

Draft Regulatory Language

I. **Definitions**

A. *Bank Holding Company Act* means the Bank Holding Company Act of 1956, as amended (12 U.S.C.A. 1841 et seq.).

B. *Banking entity* means any banking entity as defined in section 13(h)(1) of the Bank Holding Company Act, but shall not include any company that would be a banking entity solely because:

[ ]. *[other appropriate exclusions];or*

[ ]. it is directly or indirectly owned or controlled by a banking entity pursuant to section 2(h)(2) of the Bank Holding Company Act and section 211.23(f)(5) of the Board's Regulation K (12 C.F.R. Part 211).

For purposes of section 13(f) of the Bank Holding Company Act, in the case of a banking entity that is or is controlled by a QFBO, the term "banking entity" refers to a branch, agency or subsidiary of such banking entity established in the United States or organized under the laws of the United States or of one or more States, and any subsidiary of any such branch, agency or subsidiary.

C. *Investment Company Act* means the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.).

D. *Investment grade securities* means securities that are rated "investment grade", as defined in section 211.2(n) of the Board's Regulation K (12 C.F.R. Part 211) or that meets any other credit-worthiness standard that replaces investment grade for purposes of section 211.4(a)(2) of Regulation K.

E. *Ownership interest* in a private fund means any equity, partnership or other ownership interest in such fund, but shall not include:

[ ]. *[other appropriate exclusions]; or*

[ ]. private fund-linked derivative products and other financial instruments that are in some way based on the performance of a private fund but which do not represent, or carry all of the rights

and privileges attached to, an actual ownership interest in such fund.

F. *Private fund* means any hedge fund or private equity fund as defined in section 13(h)(2) of the Bank Holding Company Act, except for any:

[ ]. *[other appropriate exclusions]; or*

[ ]. regulated foreign investment company.

G. *Proprietary trading* means proprietary trading as defined in section 13(h)(4) of the Bank Holding Company Act.

H. *QFBO* means a qualifying foreign banking organization under section 211.23(a) of the Board's Regulation K (12 C.F.R. Part 211).

I. *Regulated foreign investment company* means any fund, trust or other pooled or collective investment vehicle that would be an investment company under the Investment Company Act if its securities were publicly offered in the United States (i) the securities of which are traded on an exchange outside the United States, or (ii) (A) the securities of which have been publicly offered and distributed outside the United States pursuant to applicable foreign regulatory requirements, and (B) that is subject to substantive regulation by a foreign government authority.

J. *Regulated insurance company* for purposes of section 13(d)(1)(F) of the Bank Holding Company Act includes each insurance company directly engaged in the business of insurance, whether such insurance company is organized under the laws of a State or any other U.S. or foreign jurisdiction, if but only if the requirements of clause (i) and clause (ii) of section 13(d)(1)(F) are satisfied (in the case of clause (i), insofar as the insurance company investment laws, regulations, and written guidance of the State or other U.S. or foreign jurisdiction in which such insurance company is domiciled are concerned).

K. *U.S. resident* has the meaning ascribed to "U.S. person" in section 230.902(k) of Regulation S of the Securities and Exchange Commission (17 C.F.R. Part 230).

II. Implementing Regulations

A. *Proprietary trading solely outside the United States authorized.* A banking entity may engage in proprietary trading pursuant to section

4(c)(9) or 4(c)(13) of the Bank Holding Company Act, as implemented in the Board's Regulation K (12 C.F.R. Part 211), so long as:

1. the banking entity engaged as principal in the proprietary trading is, or is directly or indirectly controlled by, a QFBO;

2. the banking entity engaged as principal in the proprietary trading is not, and is not directly or indirectly controlled by, a banking entity that is organized under the laws of the United States or of one or more States;

3. the proprietary trading positions as principal (including financial obligation and ownership) are held, reported and maintained, outside the United States;

4. any entity in the United States that acts as broker, agent, adviser or intermediary, or in any similar capacity, for, on behalf of, or for the account of, a banking entity, conducts any such activities pursuant to the banking entity's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the banking entity (acting through one or more of its senior officers) outside the United States; and

5. the banking entity engaged as principal in the proprietary trading is subject, directly or indirectly, to prudential standards (such as capital adequacy and risk asset exposure) evaluated by (and subject to the oversight of) the QFBO's home country supervisor or other applicable foreign government authority outside the United States.

B. *Investment in and sponsorship of private funds solely outside the United States authorized.* A banking entity may acquire or retain an ownership interest in, or sponsor, any private fund pursuant to section 4(c)(9) or 4(c)(13) of the Bank Holding Company Act, as implemented in the Board's Regulation K (12 C.F.R. Part 211), so long as:

1. the banking entity is, or is directly or indirectly controlled by, a QFBO;

2. the banking entity is not, and is not directly or indirectly controlled by, a banking entity that is organized under the laws of the United States or of one or more States;

3. in the case of a private fund sponsored or controlled by the banking entity, the private fund is organized under the laws of a jurisdiction outside the United States;

4. the banking entity's private fund ownership interests and related risk are held, reported and maintained outside the United States;

5. the decision to acquire or retain an ownership interest in, or sponsor, the private fund is made pursuant to the banking entity's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the banking entity (acting through one or more of its senior officers) outside the United States;

6. the banking entity that acquires or retains an ownership interest in, or sponsors, the private fund is subject, directly or indirectly, to prudential standards (such as capital adequacy and risk asset exposure) evaluated by (and subject to the oversight of) the QFBO's home country supervisor or other applicable foreign government authority outside the United States; and

7. the banking entity and its affiliates and agents do not sell, or offer for sale, to a U.S. resident any ownership interest in the private fund at any time after the end of the applicable conformance period described in section 13(c)(2) of the Bank Holding Company Act.

C. *Proprietary trading in foreign government securities*. The [relevant agency] hereby determines, pursuant to section 13(d)(1)(J) of the Bank Holding Company Act, that it would promote and protect the safety and soundness of banking entities and the financial stability of the United States to include, among the activities permitted under section 13(d)(1)(A) of the Bank Holding Company Act, obligations of (1) any national government or political subdivision of any country, where such obligations are investment grade securities; or (2) an agency or instrumentality of any national government, where such obligations are investment grade securities and are supported by the taxing authority, guarantee or full faith and credit of that government.