



Commodity Futures Trading Commission

Office of Public Affairs

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CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Certain Requirements under Section 13 of the Bank Holding Company Act of 1956 and Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added a new section 13 to the Bank Holding Company Act of 1956 ("BHC Act"), commonly referred to as the Volcker rule, that generally prohibits insured depository institutions and any company affiliated with an insured depository institution from engaging in proprietary trading and from acquiring or retaining ownership interests 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.

The Commodity Futures Trading Commission ("CFTC") is working closely with the other agencies charged with implementing the requirements of section 13, including the Federal Reserve Board, Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (each an "Agency" and collectively with the CFTC "the Agencies"). While these frequently asked questions ("FAQs") apply to banking entities for which the CFTC has jurisdiction under section 13 of the BHC Act, they have been developed by staffs of the Agencies and substantively identical versions will appear on the public websites of each Agency.

Metrics Reporting During the Conformance Period

1. Appendix A of the final rule provides that certain of the metrics required to be reported by banking entities under the final rule should include the limits set out in §§ 75.4 and 75.5 of the final rule. Since the limits required by §§ 75.4 and 75.5 of the final rule are not required to be established prior to the end of the conformance period, when would a banking entity need to report metrics that include these limits?

A banking entity must conform its activities and investments to the prohibitions and restrictions of the final rule implementing section 13 of the Bank Holding Company Act no later than the end of the conformance period.¹ During this conformance period, some banking entities are nonetheless required to report certain quantitative measurements to the appropriate Agency under Appendix A of the final rule.² Appendix A provides that Risk and Position Limits and Usage should include the limits set out in §§ 75.4 and 75.5 of the final rule and explains that a number of metrics such as Risk Factor Sensitivities, Value-at-Risk, and Stress Value-at-Risk relate to a trading desk's risk and position limits and are useful in evaluating and setting these

¹ See Federal Reserve System, Order Approving Extension of Conformance Period (Dec. 10, 2013), available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf>.

² See 12 C.F.R. § 75.20(d).

limits in the broader context of the trading desk's overall activities, particularly for the market-making-related activities under § 75.4(b) and the risk-mitigating hedging activities under § 75.5.³

The limits required under the underwriting, market-making, and risk-mitigating hedging sections of the final rule must be in place by the end of the conformance period. A banking entity that reports metrics under Appendix A prior to the end of the conformance period need not report the limits required by §§ 75.4(a)(2)(iii), 75.4(b)(2)(iii), and 75.5(b)(1)(i) until the end of the conformance period. However, if such a banking entity already has in place or develops limits of the type described in §§ 75.4 and 75.5 prior to the end of the conformance period, the banking entity is urged to report such limits as part of its reporting of quantitative measurements to the appropriate Agency.

Mortgage-Backed Securities of Government-Sponsored Enterprises

2. How are certain mortgage-backed securities issuers sponsored by government-sponsored enterprises ("GSEs") treated under the final rule's covered funds provisions?

Section 75(10)(c)(12)(ii) of the final rule excludes from the definition of a covered fund an issuer that may rely on an exclusion or exemption from the definition of "investment company" under the Investment Company Act of 1940 other than the exclusions contained in section 3(c)(1) and 3(c)(7) of that Act. The SEC has stated that, "certain federally sponsored structured financings, such as those sponsored by the Federal National Mortgage Association, are exempted from the [Investment Company] Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities and wholly owned corporations of such instrumentalities."⁴ To the extent that an issuer may rely on section 2(b) of the Investment Company Act, the issuer would be relying on an exemption from regulation under the Investment Company Act other than the exclusions contained in section 3(c)(1) or 3(c)(7), and thus would qualify for the exclusion from the covered fund definition provided by section 75.10(c)(12)(ii) of the final rule.

³ See Appendix A, 79 Fed. Reg. 5808 at 6067.

⁴ See *Exclusion From the Definition of Investment Company for Certain Structured Financings*, Investment Company Act Rel. No. 18736 (June 5, 1992). In addition, staff in the SEC's Division of Investment Management have taken the position, based on the facts and representations presented to the staff in each case, that certain GSE-sponsored mortgage-backed securities issuers would not be required to register under the Investment Company Act in reliance on section 2(b) of that Act. See, e.g., Federal National Mortgage Association, SEC No-Action Letter (May 25, 1988) (expressing the staff's view that the Federal National Mortgage Association ("Fannie Mae") "is excluded from the 1940 Act under Section 2(b) as an instrumentality of the United States" and that Fannie Mae, rather than certain trusts, is the issuer for purposes of sections 3(a)(1) and 3(a)(3) of the Investment Company Act).