

**DEPARTMENT OF TREASURY**  
**Office of the Comptroller of the Currency**  
**12 CFR Part 44**  
**[Docket ID OCC-2018-0029]**  
**RIN 1557-AE47**

**FEDERAL RESERVE SYSTEM**  
**12 CFR Part 248**  
**[Docket No. R-1643]**  
**RIN 7100-AF33**

**FEDERAL DEPOSIT INSURANCE CORPORATION**  
**12 CFR Part 351**  
**RIN 3064-AE88**

**COMMODITY FUTURES TRADING COMMISSION**  
**17 CFR Part 75**  
**RIN 3038-AE72**

**SECURITIES AND EXCHANGE COMMISSION**  
**17 CFR Part 255**  
**[Release no. BHCA-6; File no. S7-30-18]**  
**RIN 3235-AM43**

**Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds**

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

**ACTION:** Final rules.

**SUMMARY:** The OCC, Board, FDIC, SEC, and CFTC are adopting final rules to amend the regulations implementing the Bank Holding Company Act's prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds (commonly known as the Volcker Rule) in a manner consistent with the statutory amendments made pursuant to certain sections of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The EGRRCPA amendments and the final rules exclude

from these prohibitions and restrictions certain firms that have total consolidated assets equal to \$10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets. The EGRRCPA amendments and the final rules also revise the restrictions applicable to the naming of a hedge fund or private equity fund to permit an investment adviser that is a banking entity to share a name with the fund under certain circumstances.

**DATES:** These final rules are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, 202-649-6360; Tabitha Edgens, Senior Attorney; Mark O'Horo, Senior Attorney, Chief Counsel's Office, (202) 649-5510; for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

*Board:* Flora Ahn, Special Counsel, (202) 452-2317, Gregory Frischmann, Senior Counsel, (202) 452-2803, Kirin Walsh, Attorney, (202) 452-3058, or Sarah Podrygula, Attorney, (202) 912-4658, Legal Division, Constance Horsley, Deputy Associate Director, (202) 452-5239, Cecily Boggs, Senior Financial Institution Policy Analyst, (202) 530-6209, David Lynch, Deputy Associate Director, (202) 452-2081, Division of Supervision and Regulation; 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](mailto:bbean@fdic.gov), Michael E. Spencer, Chief, Capital Markets Strategies, [michspencer@fdic.gov](mailto:michspencer@fdic.gov), Andrew D. Carayiannis, Senior Policy Analyst, [acarayiannis@fdic.gov](mailto:acarayiannis@fdic.gov), or Brian Cox, Capital Markets Policy Analyst, [brcox@fdic.gov](mailto:brcox@fdic.gov), Capital Markets Branch, (202) 898-6888; Michael B. Phillips, Counsel, [mphillips@fdic.gov](mailto:mphillips@fdic.gov), Benjamin J. Klein, Counsel, [bklein@fdic.gov](mailto:bklein@fdic.gov), or Annmarie H. Boyd, Counsel, [aboyd@fdic.gov](mailto:aboyd@fdic.gov),

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

*SEC*: Andrew R. Bernstein, Senior Special Counsel, Sam Litz, Attorney-Adviser, Aaron Washington, Special Counsel, or Carol McGee, Assistant Director, at (202) 551-5870, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, and Matthew Cook, Senior Counsel, Benjamin Tecmire, Senior Counsel, and Jennifer Songer, Branch Chief, at (202) 551-6787 or [IArules@sec.gov](mailto:IArules@sec.gov), Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

*CFTC*: Cantrell Dumas, Special Counsel, (202) 418-5043, [cdumas@cftc.gov](mailto:cdumas@cftc.gov); Jeffrey Hasterok, Data and Risk Analyst, (646) 746-9736, [jhasterok@cftc.gov](mailto:jhasterok@cftc.gov), Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418-6636, [mfajfar@cftc.gov](mailto:mfajfar@cftc.gov), Office of the General Counsel; Stephen Kane, Research Economist, (202) 418-5911, [skane@cftc.gov](mailto:skane@cftc.gov), Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 13 of the Bank Holding Company Act of 1956 (BHC Act),<sup>1</sup> also known as the Volcker Rule, generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions.<sup>2</sup>

Under the statute, authority for developing and adopting regulations to implement the prohibitions and restrictions of section 13 of the BHC Act is shared among the OCC, Board,

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<sup>1</sup> 12 U.S.C. 1851.

<sup>2</sup> *See id.*

FDIC, SEC, and CFTC (the agencies).<sup>3</sup> The agencies adopted final rules implementing section 13 of the BHC Act in December 2013 (the 2013 final rule).<sup>4</sup> The agencies recently proposed amendments to these rules to provide clarity about what activities are prohibited, and to improve supervision and implementation of section 13 of the BHC Act.<sup>5</sup>

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amended section 13 of the BHC Act by modifying the definition of “banking entity” to exclude certain community banks and their affiliates from section 13’s restrictions and by permitting an investment adviser that is a banking entity to share a name with a hedge fund or private equity fund that the banking entity organizes and offers under certain circumstances.<sup>6</sup>

Prior to the enactment of EGRRCPA, the definition of “banking entity,” for purposes of section 13 of the BHC Act, included any insured depository institution, as defined in the Federal

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<sup>3</sup> See 12 U.S.C. 1851(b)(2). Under section 13(b)(2)(B) of the BHC Act, rules implementing section 13’s prohibitions and restrictions must be issued by: (i) the appropriate Federal banking agencies (i.e., the Board, the OCC, and the FDIC), jointly, with respect to insured depository institutions; (ii) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an appropriate Federal banking agency, the SEC, or the CFTC is the primary financial regulatory agency); (iii) the CFTC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act; and (iv) the SEC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act. *See id.*

<sup>4</sup> See “Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Final Rule,” 79 FR 5535 (Jan. 31, 2014).

<sup>5</sup> See “Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds,” 83 FR 33432 (July 17, 2018).

<sup>6</sup> See Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, sections 203, 204 (May 24, 2018). These provisions were effective upon EGRRCPA’s enactment.

Deposit Insurance Act (FDI Act),<sup>7</sup> any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (IBA), and any affiliate or subsidiary of such entity (excluding from the term insured depository institution certain insured depository institutions that function solely in a trust or fiduciary capacity, subject to a variety of conditions).<sup>8</sup>

Section 203 of EGRRCPA, entitled “Community bank relief,” modified the scope of the term “banking entity” to exclude certain community banks and their affiliates. Specifically, under section 203, the term “insured depository institution” no longer includes any institution that does not have, and is not controlled by a company that has: (i) more than \$10 billion in total consolidated assets; and (ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets. Therefore, an insured depository institution and its affiliates generally are not “banking entities” if the insured depository institution and each affiliated insured depository institution meets the statutory exclusion.<sup>9</sup> However, EGRRCPA did not amend the definition of “banking entity” as it relates to a company that is treated as a bank holding company for purposes of section 8 of the IBA. Accordingly, the statutory exclusion does not apply to a

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<sup>7</sup> Section 3(c)(2) of the FDI Act defines an insured depository institution to include any bank or savings association the deposits of which are insured by the FDIC under the FDI Act. 12 U.S.C. 1813(c)(2).

<sup>8</sup> 12 U.S.C. 1813(c)(2), 1851(h)(1).

<sup>9</sup> Section 203 amended section 13(h)(1)(B) of the BHC Act by excluding certain institutions from the term “insured depository institution” exclusively for the purposes of section 13. Insured banks and savings associations that qualify for this exclusion for the purposes of section 13 of the BHC Act remain insured depository institutions under section 3(c)(2) of the FDI Act. Additionally, an institution that meets the criteria to be excluded from the definition of insured depository institution under EGRRCPA may still be a banking entity by virtue of its affiliation with another insured depository institution or a company that is treated as a bank holding company under section 8 of the IBA.

foreign banking organization with a U.S. branch or agency, which continues to be subject to the prohibitions in section 13 of the BHC Act.

Section 204 of EGRRCPA revised the restrictions applicable to the naming of a hedge fund or private equity fund<sup>10</sup> to permit an investment adviser that is a banking entity to share a name with the fund under certain circumstances. Prior to enactment of EGRRCPA, section 13 provided that a banking entity (or an affiliate of the banking entity), including an investment adviser, that organized and offered a hedge fund or private equity fund could not share the same name or a variation of the same name with the fund (the name-sharing restriction).<sup>11</sup> Section 204 of EGRRCPA amended the name-sharing restriction to permit a hedge fund or private equity fund organized and offered by a banking entity to share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if: (1) the investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the IBA;<sup>12</sup> (2) the investment adviser does not share the same name or a variation of the same name with any such entities; and (3) the name does not contain the word “bank.”

On February 8, 2019, the agencies published a notice of proposed rulemaking (the proposal) to revise the 2013 final rule consistent with the EGRRCPA statutory amendments.<sup>13</sup>

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<sup>10</sup> The terms “hedge fund” and “private equity fund” are defined at 12 U.S.C. 1851(h)(2). *See also* 12 CFR 44.10(b); 12 CFR 248.10(b); 12 CFR 351.10(b); 17 CFR 255.10(b); 17 CFR 75.10(b) (defining “covered fund” for purposes of the 2013 final rule).

<sup>11</sup> 12 U.S.C. 1851(d)(1)(G)(vi) (2017).

<sup>12</sup> 12 U.S.C. 3106.

<sup>13</sup> “Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds,” 84 FR 2778 (Feb. 8, 2019).

For the reasons discussed below, the agencies are now adopting the proposal as final without change.

## **II. Description of the Final Rules**

### **A. Definition of Banking Entity**

Consistent with the proposal, the agencies are modifying the definition of “insured depository institution” in § \_\_.2(r) of the 2013 final rule to conform that definition with section 203 of EGRRCPA. Under this revised definition, an insured depository institution must satisfy two conditions for it and its affiliates to qualify for the exclusion. First, the insured depository institution, and every entity that controls it, must have total consolidated assets equal to or less than \$10 billion. Second, total consolidated trading assets and liabilities of the insured depository institution, and every entity that controls it, must be equal to or less than five percent of its total consolidated assets.

Trade associations representing large commercial banks, community banks, and credit unions all generally supported the agencies’ proposal to implement the community bank relief provision under section 203 of EGRRCPA.<sup>14</sup> Some commenters cited, among other considerations, the statute’s plain meaning, legislative history, and policy considerations for their support of the proposal.<sup>15</sup> Certain other commenters suggested that section 203 extended relief to firms with *either* \$10 billion or less in total consolidated assets *or* trading assets and liabilities equal to 5 percent or less of total consolidated assets.<sup>16</sup> Under these commenters’ view of section 203, many banks with total consolidated assets well over \$10 billion, including certain

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<sup>14</sup> See American Bankers Association; Independent Community Bankers of America; National Association of Federally-Insured Credit Unions; California Bankers Association.

<sup>15</sup> Los Huertos and Mount; National Association of Federally-Insured Credit Unions.

<sup>16</sup> See Competitive Enterprise Institute; Competitive Enterprise Institute *et al.*; Luetkemeyer; Matthew Thomas.

global systemically important banks (G-SIBs) with over \$250 billion in total consolidated assets, would be exempt from section 13 of the BHC Act.

After considering these comments, the agencies are not persuaded by the argument that the exclusion under section 203 of EGRRCPA extends to institutions with total consolidated assets in excess of \$10 billion. The agencies believe that the statute requires an institution to satisfy both criteria to qualify for the exclusion. This approach is most consistent with the statutory language of EGRRCPA, the congressional intent behind the statute, and the structure of the statute as a whole.

The agencies note that Section 203 of EGRRCPA, is entitled “Community bank relief,” and that numerous floor statements made by senators contemporaneously with passage of the legislation in the Senate on a bipartisan basis indicated that section 203 was only intended to exclude community banks and their affiliates.<sup>17</sup> Moreover, the Senate Banking Committee’s summary of section 203 describes it as exempting banking entities that have total consolidated assets of \$10 billion or less and total trading assets and trading liabilities that are five percent or less of total consolidated assets.<sup>18</sup> For these reasons, the agencies are adopting without change the proposed revisions to the banking entity definition.

Some commenters requested that, for purposes of determining whether trading assets and liabilities are within the five percent threshold, the agencies limit their review to an institution’s most recent applicable regulatory filing.<sup>19</sup> These commenters requested that the agencies not

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<sup>17</sup> See, e.g., 164 Cong. Rec. S1696 at S1701, S1720, S1724–25 (Mar. 14, 2018).

<sup>18</sup> See S. 2155, Section-By-Section, as Passed by Senate, United State Senate Committee on Banking and Urban Affairs (March 14, 2018).

<sup>19</sup> See American Bankers Association; California Bankers Association. Another commenter requested that the agencies provide additional clarity for the purposes of determining which institutions qualify for the relevant exclusion. See Grimm. That commenter also requested



review all “available information,” as suggested in the preamble to the proposal,<sup>20</sup> because such information could be at variance with the trading assets and/or liabilities figure(s) reported in the most recent applicable regulatory filing. These commenters also requested that the agencies confirm that section 203 of EGRRCPA is self-effectuating and that no additional action is required by the agencies for the community bank exclusion to take effect.

The agencies confirm that a bank or savings association seeking to determine its eligibility for the exclusion may use its most recent quarterly Consolidated Report of Condition and Income (call report) as the source of data for its consolidated assets and its total trading assets and liabilities at the bank or savings association level. Similarly, a banking organization may use the most recent filing of the Board’s FR Y-9C by its holding company as the source of data about the consolidated assets and total trading assets and liabilities of the companies controlling the bank or savings association. Generally, the agencies believe that most current FR Y9-SP filers will be able to determine eligibility for the exclusion based on the call report data filed by their affiliated insured depository institution(s). All entities that seek to rely on the community bank exclusion should assure themselves that all affiliated banks or savings associations and holding companies satisfy the total consolidated assets and trading asset and liability thresholds. As the agencies noted in the proposal, institutions that meet the eligibility requirements under section 203 of EGRRCPA are no longer subject to the requirements of section 13 of the BHC Act, and no additional action by the agencies is required for the exclusion to take effect.

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further clarity with respect to the changes made to the name-sharing restriction pursuant to section 204 of EGRRCPA.

<sup>20</sup> The preamble to the proposal stated that “the Agencies would expect to use available information, including information reported on regulatory reporting forms available to each Agency, with respect to whether financial institutions qualify for the exclusion.” 84 FR 2781.

Two commenters requested that the agencies provide clarification that certain securities held by banks or savings associations and their holding companies are not within the category of “trading assets” for purposes of determining eligibility for the exclusion.<sup>21</sup> As described above, the call report or FR Y-9C, as applicable, may be used as the source of data for purposes of determining compliance with the total assets and trading asset and liability thresholds. Institutions should classify assets and liabilities consistent with the instructions to the relevant report in consultation with appropriate supervisors, as necessary.

One commenter requested that the agencies generally clarify that securities held as available-for-sale do not count towards the trading assets and liabilities threshold.<sup>22</sup> The call report and FR Y-9C require reporting an institution’s available-for-sale securities separately from the institution’s trading assets. Accordingly, securities appropriately classified as available-for-sale and excluded from trading assets on an institution’s call report or FR Y-9C will not count toward an institution’s trading assets and liabilities threshold. Another commenter requested that the agencies address the classification of securities held in connection with employee deferred compensation programs for purposes of the call report and FR Y-9C.<sup>23</sup> The question of how to classify specific types of assets, such as assets held in connection with employee deferred compensation programs, on the call report and FR Y-9C is fact-specific and beyond the scope of this rulemaking.<sup>24</sup> As stated above, institutions should classify assets and

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<sup>21</sup> American Bankers Association (securities reported as available-for-sale); Bessemer Group, Inc. (mutual fund shares held to hedge nonqualified compensation plan liabilities).

<sup>22</sup> American Bankers Association.

<sup>23</sup> Bessemer Group, Inc.

<sup>24</sup> The regulatory reporting forms to which the commenter is requesting revision or clarification are also used for other purposes, such as for determining capital requirements. *See* 12 CFR Part 3, App. B; 12 CFR 217.202; 12 CFR 324.202 (using trading assets and liabilities for the purpose

liabilities consistent with the instructions to the relevant report in consultation with appropriate supervisors, as necessary.

Two commenters generally opposed providing an exclusion to community banks.<sup>25</sup> One of these commenters suggested that, for a community bank to remain eligible for the exclusion, it should be required to pass periodic tests by its regulator.<sup>26</sup> As noted above, EGRRCPA excludes community banks from section 13 if they meet the specified total consolidated assets and trading asset and liability conditions, and these provisions became effective upon enactment.

Accordingly, the agencies are finalizing the exclusion as proposed in order to conform the regulation to the statutory exclusion. The banking agencies note that they will continue to examine community banks that are exempt under section 203 for compliance with applicable laws and regulations, including the requirement under applicable banking laws and regulations that they operate in a safe and sound manner.

Another commenter requested relief from the control definition or a specific exclusion for investors in companies that control industrial loan companies (ILCs).<sup>27</sup> Any changes to the definition of “control” under the BHC Act<sup>28</sup> are outside of the scope of this rulemaking.<sup>29</sup> Furthermore, the agencies do not find any support for a specific exemption from section 13 of

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of determining “covered positions” under the market risk capital rule). Accordingly, changes to the reporting forms or the instructions thereto would likely have unintended consequences for other areas of supervision and regulation.

<sup>25</sup> Tinee Carraker, Rodger Cunningham.

<sup>26</sup> *See* Carraker.

<sup>27</sup> *See* EnerBank.

<sup>28</sup> 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e)(1).

<sup>29</sup> The Board recently invited comment on a notice of proposed rulemaking to simplify and increase the transparency of the rules for determining control of a banking organization. Press Release: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190423a.htm>.

the BHC Act for investors in ILC parents under EGRRCPA. Accordingly, the agencies are not adopting an exemption from section 13 of the BHC Act for parent ILCs or investors in the parent ILCs that do not otherwise meet the eligibility requirements for the community bank exclusion under section 203.

## **B. Modification of Name-Sharing Restriction**

Consistent with the proposal, the agencies are modifying the name-sharing restriction in § \_\_.11(a)(6)(i) of the 2013 final rule to conform that restriction to section 204 of EGRRCPA. Pursuant to this change, a hedge fund or private equity fund sponsored by a banking entity is permitted to share the same name or a variation of the same name with a banking entity that is an investment adviser to the fund, subject to the conditions specified in the statute.<sup>30</sup> These conditions require that the investment adviser is not, and does not share the same name (or a variation of the same name) as, an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the IBA,<sup>31</sup> and that the investment adviser's name does not contain the word "bank."<sup>32</sup>

The agencies received four comments on these proposed changes to the name-sharing restriction. One commenter generally supported the proposed changes to the name-sharing

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<sup>30</sup> EGRRCPA, section 204. While the statute applies these restrictions and conditions to "hedge funds" and "private equity funds," the 2013 final rule applies to "covered funds," as defined in § \_\_.10 of the regulations. *See supra* footnote 10.

<sup>31</sup> 12 U.S.C. 1851(d)(1)(G)(vi)(I); 12 U.S.C. 1851(d)(1)(G)(vi)(II).

<sup>32</sup> 12 U.S.C. 1851(d)(1)(G)(vi)(III). The requirement that the name not contain the word "bank" was included in the name-sharing restriction by section 204 of EGRRCPA but already is a condition under the 2013 final rule. Accordingly, the agencies did not make any additional modifications to the rule to reflect this condition.

restriction.<sup>33</sup> Two commenters asked the agencies to provide relief from the name-sharing restriction for covered funds that are required or expected by regulators in a foreign jurisdiction to share the same name or a variation of the same name with a fund manager, and the fund manager shares a name or a variation of the same name as its banking entity affiliate.<sup>34</sup> One of these commenters asserted that concerns regarding investor confusion about the role of the banking entity or perceived bailout risk would be mitigated because the funds would be required to comply with the written disclosure requirements under the 2013 final rule for organizing and offering a covered fund.<sup>35</sup> Another commenter suggested that the agencies could use their exemptive authority under section 13(d)(1)(J) of the BHC Act to implement this exemption.<sup>36</sup>

The purpose of these revisions to the 2013 final rule is to conform the amendments to section 204 of EGRRCPA. Section 204 of EGRRCPA did not provide an exclusion allowing banking entities to share a name with a covered fund if required or expected to by foreign regulators. Accordingly, the agencies have determined not to make the requested change to the name-sharing restriction, which goes beyond the scope of this rulemaking, and are adopting the changes implementing section 204 as proposed.

The agencies are also finalizing conforming changes to the definition of “sponsor.”<sup>37</sup> Pursuant to these changes, the definition of the term “sponsor” includes a banking entity that shares the same name or a variation of the same name with a fund, for corporate, marketing,

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<sup>33</sup> Independent Community Bankers of America.

<sup>34</sup> American Bankers Association; Investment Adviser Association. Another commenter stated that the agencies should be mindful of any foreign requirements on name-sharing between covered funds and banking entities. *See* Matthew Thomas.

<sup>35</sup> *See* Investment Adviser Association; 12 CFR 44.11(a)(8); 12 CFR 248.11(a)(8); 12 CFR 351.11(a)(8); 17 CFR 255.11(a)(8); 17 CFR 75.11(a)(8).

<sup>36</sup> *See* American Bankers Association.

<sup>37</sup> EGRRCPA section 204.

promotional, or other purposes, except as permitted under §\_\_.11(a)(6)—i.e., the name-sharing restriction as amended by EGRRCPA. The agencies did not receive any comments on the proposed conforming changes to the definition of “sponsor.” The agencies are adopting this change as final in order to conform the rule to the EGRRCPA statutory revisions.

### **III. Administrative Law Matters**

#### **A. Paperwork Reduction Act**

Certain provisions of the final rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed and determined that the final would not change the current reporting, recordkeeping or third-party disclosure requirements associated with section 13 of the BHC Act under the PRA. However, the final rule would reduce the number of respondents for the Board (including OCC-, FDIC-, SEC-, and CFTC-supervised institutions under a holding company), FDIC (with respect to supervised institutions not under a holding company), and OCC (supervised institutions not under a holding company), which will be addressed as a nonmaterial change to OMB.

#### **B. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act<sup>38</sup> requires the OCC, Board, and FDIC (Federal banking agencies) to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies have sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on plain language.

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<sup>38</sup> Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

### C. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of \$550 million or less and trust companies with total assets of \$38.5 million or less) or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 758 small entities.<sup>39</sup>

Because the statutory provisions are already in effect, and this rule only revises the OCC's existing regulations to conform to this statutory change, this rule does not affect a substantial number of small entities. Section 204 of EGRRCPA generally does not apply to OCC-supervised institutions.

The OCC's threshold for a significant effect is whether cost increases associated with a proposed rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of a small bank's total non-interest expense. Even if the rule affected a substantial number of small banks, the OCC does not believe that it would have a significant economic impact on small banks, because OCC-supervised institutions that qualify for the exclusion under section 203 of the EGRRCPA should not have compliance costs associated with 12 CFR part 44. OCC-supervised institutions can determine their eligibility for the exclusion at

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<sup>39</sup> We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR § 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2018, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

the bank level based on information they are separately required to file in their Consolidated Reports of Condition and Income. Therefore, the OCC certifies that the rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

*Board:* The RFA imposes certain requirements on the Board regarding any potential significant economic impact that a rule may have on a substantial number of small entities. The size standard to be considered a small business for banking entities subject to the rule is generally \$550 million or less in consolidated assets.<sup>40</sup> The Board has considered the potential economic impact of the final rule on Board-supervised small entities in accordance with the RFA. The Board believes that the final rule will not have a significant economic impact on a substantial number of small entities for the reasons described below.<sup>41</sup>

### *1. Reason for the Final Rule*

As discussed in the **SUPPLEMENTARY INFORMATION**, the agencies are revising the regulations implementing section 13 of the BHC Act in conformance with EGRRCPA. The final rule therefore excludes from the definition of “insured depository institution” if an insured depository institution (and any company that controls such institution) has total consolidated assets equal to \$10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets. Such institutions are exempt from the prohibitions and restrictions under section 13 of the BHC Act.

### *2. Statement of Objectives and Legal Basis*

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<sup>40</sup> U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at* [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

<sup>41</sup> The Board published an initial RFA analysis in connection with the proposal and received no public comments related to its analysis.



As discussed above, the agencies' objective in finalizing amendments to the regulations implementing section 13 of the BHC Act is to conform the regulations to changes recently enacted by sections 203 and 204 of EGRRCPA. The agencies are explicitly authorized under section 13(b)(2) of the BHC Act to adopt rules implementing section 13.<sup>42</sup>

### *3. Description of Small Entities to Which the Regulation Applies*

Section 203 of EGRRCPA exempted approximately 3,193 Board-supervised small entities from section 13 of the BHC Act.<sup>43</sup> The Board's final rule conforms its regulations implementing section 13 to the statutory changes.

### *4. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

Sections 203 and 204 of EGRRCPA were effective upon enactment, and, thus, any economic impacts on small entities associated with these changes were caused by the statutory changes. Section 203 of EGRRCPA exempted all Board-supervised small entities from the reporting, recordkeeping, and all other requirements associated with section 13 of the BHC Act. While section 203 of EGRRCPA, therefore, affects a substantial number of Board-supervised small entities, it is not expected to have a significant economic impact on such entities. This is because such small entities generally engage in limited activities subject to section 13 of the BHC Act and are subject to limited compliance requirements under the rule.

The Board estimates that Board-supervised small entities that are no longer subject to section 13 of the BHC Act due to section 203 of EGRRCPA will save, on average,

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<sup>42</sup> 12 U.S.C. 1851(b)(2).

<sup>43</sup> Qualifying institutions eligible for this exclusion would consist of state member banks, bank holding companies, and savings and loan holding companies that meet the eligibility criteria for the exclusion.

approximately \$5,000 per year.<sup>44</sup> This represents, on average, less than 1.25 percent of net income and less than 0.07 percent of total equity for such entities. For the reasons stated above, section 203 of EGRRCPA and the Board’s final rule are not expected to have a significant economic impact on Board-supervised small entities.

Section 204 of EGRRCPA, which amends the restrictions related to the naming of covered funds, will likely only have direct economic impacts on investment advisory businesses subject to section 13 of the BHC Act. Because the Board is not the primary financial regulatory agency for investment advisers,<sup>45</sup> section 204 of EGRRCPA not expected to have a significant economic impact on Board-supervised small entities.

#### *5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations*

The Board has not identified any federal statutes or regulations that duplicate, overlap, or conflict with the proposed revisions.

#### *6. Discussion of Significant Alternatives*

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<sup>44</sup> This estimate is based on the paperwork, recordkeeping, and disclosure-related compliance requirements associated with section 13 of the BHC Act that the Board estimates for purposes of the PRA. Because community banks do not significantly engage in the types of activities subject to section 13’s prohibitions and restrictions, the majority of the ongoing costs associated with section 13 for community banks prior to EGRRCPA were likely related to recordkeeping and should thus be captured by this data. The average estimated compliance cost savings would be \$9,225, equal to 146 hours multiplied by an estimated total hourly compensation rate of \$63.36 per hour. According to the May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector the 75<sup>th</sup> percentile wages for a compliance officer is \$40.55 per hour. The wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the December 2018 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 33.7 percent of total compensation. The wage is also inflation adjusted according to the BLS data on the Consumer Price Index for Urban Consumers (CPI-U) so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 3.59 percent between May 2017 and December 2018. Therefore, the adjusted average wage for a compliance officer is \$63.36 per hour.

<sup>45</sup> See 12 U.S.C. 1851(b)(2)(B)(i)(II).

The Board does not believe that this final rule will have a significant economic impact on a substantial number small entities. As a result, the Board has not adopted any alternatives to the final rule.

*FDIC*: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rulemaking on small entities.<sup>46</sup> A regulatory flexibility analysis is not required, however, if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBA has defined “small entities” to include banking organizations with total assets less than or equal to \$550 million.<sup>47</sup> Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. The FDIC supervises 3,489 depository institutions,<sup>48</sup> of which 2,674 are defined as small banking entities by the terms of the RFA.<sup>49</sup> Of the 2,674 small, FDIC-supervised institutions, all report having total consolidated assets less than or equal to \$10

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<sup>46</sup> 5 U.S.C. 601 *et seq.*

<sup>47</sup> The SBA defines a small banking organization as having \$550 million or less in assets, where “a financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” 13 CFR 121.201 n.8 (2018). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates...” 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

<sup>48</sup> FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

<sup>49</sup> Call Report: December 31, 2018.

billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, and are therefore, covered by the rule.<sup>50</sup>

Although the rule applies to 2,674 small, FDIC-supervised institutions, the rule would not have a significant economic impact. The statutory changes established by EGRRCPA no longer prohibit certain institutions to engage in proprietary trading,<sup>51</sup> thereby potentially increasing the volume of such activity for affected banking entities. The rule would amend the FDIC's regulations to conform to this exemption established in EGRRCPA. Therefore, this component of the rule would have no direct effect on small, FDIC-supervised institutions.

However, even if the economic effects of the proposed rule were considered relative to a pre-statutory baseline the proposed changes that enable certain institutions to engage in proprietary trading are unlikely to have a significant effect on a substantial number of small, FDIC-supervised institutions. In the years prior to the enactment of the 2013 final rule (2006 to 2012) a maximum of 59 small, FDIC-supervised institutions reported a nonzero value for trading assets, trading liabilities, or structured financial products. Additionally, in the years prior to the enactment of the 2013 final rule (2006 to 2012) trading assets as a percent of total assets ranged between 0.00013 and 0.07 percent for small, FDIC-supervised institutions.<sup>52</sup> According to the most recent Call Report data trading assets as a percent of total assets is 0.007 percent for small, FDIC-supervised institutions.<sup>53</sup> Not all trading activity is necessarily proprietary trading, so only a subset of trading assets would be affected by this rule. Also, changes in the dollar volume of trading assets and their percentage of total assets are affected by market conditions, economic

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<sup>50</sup> Call Report: December 31, 2018.

<sup>51</sup> 12 CFR 351.3(a).

<sup>52</sup> Call Report: March 2006 – December 2012.

<sup>53</sup> Call Report: December 2018.

conditions, and the decisions of senior management at small, FDIC-supervised institutions, among other things. However, the small volume of pre-Volcker Rule trading assets and liabilities at small institutions suggests that the proposed rule is unlikely to have significant effects on small, FDIC-supervised institutions, assuming that past behavior is indicative of the propensity of small, FDIC-supervised institutions to engage in trading activity that otherwise would have been prohibited under the Volcker Rule.

As previously stated, EGRRCPA permits a covered fund organized and offered by a banking entity to share the same name, or a variation of the same name, as a banking entity that is an affiliated investment adviser to the hedge fund or private equity fund, with some restrictions. By permitting a covered fund to share the name of a banking entity, or variation thereof, the fund can utilize the franchise value of the banking entity to more effectively market the fund to the bank's current account holders or the public. The size of this potential benefit is difficult to accurately estimate with available data because it depends on the business model of individual banks and funds, the propensity of those funds to advertise to particular groups, and the decisions of customers, among other things. However, since the rule would conform FDIC regulations with the statutory language enacted by EGRRCPA, this component of the rule would have no direct effect on small, FDIC-supervised institutions.

Finally, the rule would introduce conforming changes that would reduce recordkeeping, reporting, and disclosure costs for affected FDIC-supervised institutions. EGRRCPA states that certain institutions with total consolidated assets less than or equal to \$10 billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, are excluded from restrictions on engaging in proprietary trading activity. The rule would amend the FDIC's regulations to conform to this exclusion established in EGRRCPA. In so doing, the rule

would make conforming changes to reduce the recordkeeping and reporting requirements for small, FDIC-supervised institutions that were excluded from proprietary trading restriction by EGRRCPA. Although the vast majority of small, FDIC-supervised institutions are not currently required to comply with the recordkeeping, reporting, or disclosure requirements associated with proprietary trading, the rule would introduce conforming changes that would exclude some small, FDIC-supervised institutions. Of these newly excluded institutions, the rule would conform to Section 203 of EGRRCPA, which reduced recordkeeping, reporting, or disclosure requirements by up to an estimated 8 hours per institution, or approximately \$506.88 per year.<sup>54, 55</sup> The estimated reduction in recordkeeping, reporting, or disclosure costs per institution represents less than 0.01 percent of non-interest expenses, on average, for small, FDIC-supervised institution.<sup>56</sup> Thus, the FDIC believes the rule would not have a significant economic impact on small, FDIC-supervised institutions.

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small entities.

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<sup>54</sup> 8 hours \* \$63.36 per hour = \$506.88.

<sup>55</sup> The estimated reduction in costs is calculated by multiplying 8 hours by an estimated total hourly compensation rate of \$63.36 per hour. According to the May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector the 75<sup>th</sup> percentile wages for a compliance officer is \$40.55 per hour. The wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the December 2018 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 33.7 percent of total compensation. The wage is also inflation adjusted according to the BLS data on the Consumer Price Index for Urban Consumers (CPI-U) so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 3.59 percent between May 2017 and December 2018. Therefore, the adjusted average wage for a compliance officer is \$63.36 per hour.

<sup>56</sup> Call Report, December 31, 2018.

*CFTC*: Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the rule would not have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

As discussed in this **Supplementary Information**, the Agencies are revising the 2013 final rule in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term “banking entity” to exclude certain community banks and their affiliates and (b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The revisions generally apply to banking entities, including certain CFTC-registered entities. These entities include bank-affiliated CFTC-registered swap dealers, futures commission merchants, commodity trading advisors and commodity pool operators.<sup>57</sup> The CFTC has previously determined that swap dealers, futures commission merchants and commodity pool operators are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.<sup>58</sup> As for commodity trading advisors, the CFTC has found it appropriate to consider whether such registrants should be deemed small

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<sup>57</sup> The rule may also apply to other types of CFTC registrants that are banking entities, such as introducing brokers, but the CFTC believes it is unlikely that such other registrants will have significant activities that would implicate the rule. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

<sup>58</sup> *See* Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

entities for purposes of the RFA on a case-by-case basis, in the context of the particular regulation at issue.<sup>59</sup>

In the context of the rule, the CFTC believes it is unlikely that a substantial number of the commodity trading advisors that are potentially affected are small entities for purposes of the RFA. In this regard, the CFTC notes that only commodity trading advisors that are registered with the CFTC are potentially covered by the rule, and generally those that are registered have larger businesses. Similarly, the rule applies to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses.

Because the CFTC believes that there are not a substantial number of registered, banking entity-affiliated commodity trading advisors that are small entities for purposes of the RFA, and the other CFTC registrants that may be affected by the rule have been determined not to be small entities, the CFTC believes that the rule will not have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

*SEC:* In the proposal, the SEC certified that, pursuant to 5 U.S.C. 605(b), the proposal would not, if adopted, have a significant economic impact on a substantial number of small entities. Although the SEC solicited written comments regarding this certification, no commenters responded to this request.

As discussed in the **Supplementary Information**, the Agencies are adopting the proposal as final without change, in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term “banking entity” to exclude certain community banks and their affiliates and

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<sup>59</sup> See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).



(b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The revisions the Agencies are adopting today will generally apply to banking entities, including certain SEC-registered entities.<sup>60</sup> These entities include bank-affiliated SEC-registered broker-dealers, investment advisers, security-based swap dealers, and major security-based swap participants. Based on information in filings submitted by these entities, the SEC believes that there are no banking entity registered investment advisers,<sup>61</sup> broker-dealers,<sup>62</sup> security-based swap dealers, or major security-based swap participants that are small entities for purposes of the RFA.<sup>63</sup> For this reason, the SEC certifies that the rule, as adopted, will not have a significant economic impact on a substantial number of small entities.

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<sup>60</sup> The SEC's Economic Analysis, below, discusses the economic effects of the final amendments. *See* SEC Economic Analysis, section III.F.

<sup>61</sup> For the purposes of an SEC rulemaking in connection with the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than \$25 million; (2) did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year. *See* 17 CFR 275.0-7.

<sup>62</sup> For the purposes of an SEC rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d), or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. *See* 17 CFR 240.0-10(c). Under the standards adopted by the SBA, small entities also include entities engaged in financial investments and related activities with \$38.5 million or less in annual receipts. *See* 13 CFR 121.201 (Subsector 523).

<sup>63</sup> Based on SEC analysis of Form ADV data, the SEC believes that there are not a substantial number of registered investment advisers affected by the proposal that qualify as small entities under RFA. Based on SEC analysis of broker-dealer FOCUS filings and NIC relationship data, the SEC believes that there are no SEC-registered broker-dealers affected by the proposal that qualify as small entities under RFA. With respect to security-based swap dealers and major

#### **D. Riegle Community Development and Regulatory Improvement Act**

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>64</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>65</sup> The rule reduces burden and does not impose any reporting, disclosure, or other new requirements on insured depository institutions. Accordingly, the agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date.<sup>66</sup> Because delaying the effective date of the rule is not required and would serve no purpose, the final rule will be effective on the first day after publication in the **Federal Register**.

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security-based swap participants, based on feedback from market participants and information about the security-based swap markets, the Commission believes that the types of entities that would engage in more than a de minimis amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be “small entities” for purposes of the RFA. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 81 FR 53546, 53553 (Aug. 12, 2016).

<sup>64</sup> 12 U.S.C. 4802(a).

<sup>65</sup> *Id.*

<sup>66</sup> Additionally, the 30-day delayed effective date requirement under the Administrative Procedure Act is not applicable to a rule, such as the one herein, that grants or recognizes an exemption or relieves a burden. 5 U.S.C. 553(d)(1).

#### **E. OCC Unfunded Mandates Reform Act Determination**

The OCC has analyzed the rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the rule includes 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 in any one year (adjusted for inflation). The rule does not impose new mandates. Therefore, the OCC has determined that the rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this rule.

#### **F. SEC Economic Analysis**

The agencies are adopting amendments to the 2013 final rule to implement the statutory mandates of sections 203 and 204 of EGRRCPA. In accordance with section 203 of EGRRCPA,<sup>67</sup> the final rules amend the definition of “insured depository institution” in § \_\_.2(r) of the 2013 final rule to exclude an institution so long as it, and every company that controls it, has both (1) \$10 billion or less in total consolidated assets and (2) total consolidated trading assets and liabilities that are 5 percent or less of total consolidated assets. The final rule also amends the 2013 final rule to reflect the changes made by section 204 of EGRRCPA. That provision modified section 13 of the BHC Act to permit, in certain circumstances, bank-affiliated investment advisers to share their name with the hedge funds or private equity funds they organize and offer.

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<sup>67</sup> Specifically, Section 203 of EGRRCPA provides that the term “insured depository institution,” for purposes of the definition of “banking entity” in section 13(h)(1) of the BHC Act (12 U.S.C 1851(h)(1)), does not include an insured depository institution that does not have, and is not controlled by a company that has: (1) more than \$10 billion in total consolidated assets; and (2) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.

The amendments to the 2013 final rule reflect the statutory provisions of EGRRCPA that are already in effect, and the SEC continues to believe that market participants are already responding to the statutory changes. Thus, the baseline against which the SEC is assessing the effects of these amendments incorporates both: (i) the enacted statutory provisions of sections 203 and 204 of EGRRCPA, and (ii) the SEC’s understanding that banking entities with both total consolidated assets of \$10 billion or less and total consolidated trading assets and liabilities (henceforth, “TAL”) that are 5 percent or less of total consolidated assets are, consistent with EGRRCPA, no longer complying with the 2013 final rule. The SEC continues to believe that any costs, benefits, and economic effects of the final rules, including those on efficiency, competition, and capital formation, stem entirely from these statutory provisions and not from the conforming amendments to the 2013 final rule.

The SEC is mindful of the costs and benefits imposed by its rules. In the proposal, the SEC solicited comment on the economic effects of the amendments on SEC registrants and on efficiency, competition, and capital formation in securities markets. The SEC has considered these comments, as discussed below.

This analysis is limited to areas within the scope of the SEC’s function as the primary regulator of U.S. securities markets. In particular, the SEC’s economic analysis is focused on the effects of the final amendments on registrants the SEC oversees for purposes of section 13 of the BHC Act, investors and issuers in securities markets, and the functioning and efficiency of such markets.

As discussed in more detail below, the enactment of the statutory exemption in section 203 of EGRRCPA: (i) eliminated the costs of compliance with section 13 of the BHC Act for certain banking entities, with the cost savings potentially being passed along to customers and

counterparties; (ii) was not followed by significant changes in trading activity by broker-dealers (“BDs”) that qualify for the statutory exemption, and such trading activity remains extremely limited in absolute terms by year-end 2018; (iii) may have created incentives for entities that do not qualify for the statutory exemption but are close to the relevant thresholds to decrease their asset size or trading activity to become subject to the statutory exemption, though such an effect had not materialized by year-end 2018; and (iv) may have improved the competitive position of entities that qualify for the statutory exemption relative to those that are not, and the competitive position of U.S. entities that qualify for the statutory exemption relative to certain foreign banking entities.

The statutory exemption in section 204 of EGRRCPA may also have: (i) improved the ability of certain bank-affiliated registered investment advisers (“RIAs”) to compete for investor capital with RIAs that are not affiliated with banks; (ii) provided bank-affiliated RIAs that can share a name with a fund with a competitive advantage over those bank-affiliated RIAs that cannot share a name with a fund because they do not meet the statutory conditions for name sharing; and (iii) reduced some investors’ search costs in the capital allocation process by making it easier for some investors to identify bank-affiliated advisers of funds, to the extent that such advisers could share a name with a fund as a result of the statutory exemption.

The SEC continues to believe that these economic effects stem from the statutory provisions of EGRRCPA that are fully in effect, and that the conforming amendments will not result in any additional costs, benefits, or effects on efficiency, competition, and capital formation.

Certain SEC-regulated entities, such as BDs and RIAs, that fell under the definition of “banking entity” for the purposes of section 13 of the BHC Act before the enactment of

EGRRCPA qualify for the final amendments implementing sections 203 and 204 of EGRRCPA.<sup>68</sup> As presented in Panel A of Table 1,<sup>69</sup> the SEC estimates that there are as many as 114 bank-affiliated BDs with aggregate assets of approximately \$101 billion and aggregate holdings of approximately \$16 billion that are within the scope of these final amendments.<sup>70</sup> The SEC estimates that, at most, 296 bank-affiliated RIAs are within the scope of the final amendments and no longer subject to section 13 of the BHC Act.<sup>71</sup>

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<sup>68</sup> The SEC believes that all bank-affiliated entities that may register with the SEC as security-based swap dealers and major security-based swap participants are unaffected by the amendments due to the size of the balance sheet and the amount of trading activity of their affiliated banking entities. The SEC's analysis is based on DTCC Derivatives Repository Limited Trade Information Warehouse data on single-name credit-default swaps. Throughout this economic analysis, the term "banking entity" generally refers only to banking entities that are subject to section 13 of the BHC Act and for which the SEC is the primary financial regulatory agency as defined in section 2(12)(B) of the Dodd-Frank Act. *See* 12 U.S.C. 1851(b)(2); 12 U.S.C. 5301(12)(B).

<sup>69</sup> In the proposal (84 FR at 2786) the SEC used data from the release for the recently proposed amendments to these rules to provide clarity about what activities are prohibited, and to improve supervision and implementation of section 13 of the BHC Act (83 FR at 33525) as of Q3 2017. In this release, we update the estimates and use data as of Q4 2018 and Q4 2017. Data sources for Table 1 include Reporting Form FR Y-9C data for domestic bank holding companies and Reports of Condition and Income data for banks that are not bank holding companies. BD bank affiliations were obtained from the Federal Financial Institutions Examination Council's National Information Center. BD assets and holdings were obtained from FOCUS Reports data.

<sup>70</sup> As of Q4 2018, these 114 BDs were affiliated with 98 banks or holding companies.

<sup>71</sup> As estimated in the release for the recently proposed amendments to these rules to provide clarity about what activities are prohibited, and to improve supervision and implementation of section 13 of the BHC Act (83 FR at 33525), there were 308 bank-affiliated RIAs based on data as of March 31, 2018. Using data as of March 31, 2019, the SEC is updating the estimate to approximately 296 bank-affiliated RIAs. The SEC does not have information or data that would allow us to estimate how many of these bank-affiliated RIAs would have preferred to share a name with funds they advise. For the purposes of this analysis, the SEC estimates that these 296 bank-affiliated RIAs and 114 bank-affiliated BDs may be able to engage in covered fund activities as a result of section 203 of EGRRCPA. The SEC does not have information or data that would allow us to estimate how many of these entities would have preferred to engage in covered fund activities.

**Table 1. BD count, assets, and holdings by affiliation.****Panel A. After the enactment of EGRRCPA: BD statistics as of Q4 2018.**

BD affiliation	#	Total assets, \$mln <sup>72</sup>	Holdings, \$mln <sup>73</sup>	Holdings (alt.), \$mln <sup>74</sup>
Bank BDs, affiliated bank total assets > \$10bln & TAL > 5% of total assets	61	2,826,909	709,534	548,426
Bank BDs, affiliated bank total assets > \$10bln & TAL ≤ 5% of total assets	74	198,380	43,450	15,393
Bank BDs, affiliated bank total assets ≤ \$10bln & TAL > 5% of total assets	0	0	0	0
Bank BDs subject to section 203 of EGRRCPA <sup>75</sup>	114	100,518	16,379	5,376
Non-bank BDs	3,545	1,196,845	374,597	223,844
Total	3,794	4,322,651	1,143,960	793,038

<sup>72</sup> BD total assets are based on FOCUS report data for “Total Assets.”

<sup>73</sup> BD holdings are based on FOCUS reports data for securities and spot commodities owned at market value, including bankers’ acceptances, certificates of deposit and commercial paper, state and municipal government obligations, corporate obligations, stocks and warrants, options, arbitrage, other securities, U.S. and Canadian government obligations, and spot commodities.

<sup>74</sup> This measure excludes U.S. and Canadian government obligations and spot commodities.

<sup>75</sup> This category includes all bank-affiliated BDs affiliated with holding companies that have both consolidated total assets less than or equal to \$10 billion and TAL less than or equal to 5% of total assets, as well as bank-affiliated BDs for which parent firm TAL data was not available. Based on a manual search of regulatory filings for holding companies with missing assets and liabilities data and current FR Y-9C and FR Y-9SP reporting requirements, the SEC believes that entities with missing data have low levels of trading activity and likely qualify for the exemption in section 203 of EGRRCPA. To the degree that this may not be the case for some bank-affiliated BDs, these figures may overestimate the number of affected entities.

**Panel B. Before the enactment of EGRRCPA: BD statistics as of Q4 2017.**

BD affiliation	#	Total assets, \$mln	Holdings, \$mln	Holdings (alt.), \$mln
Bank BDs, affiliated bank total assets > \$10bln & TAL > 5% of total assets	57	2,711,033	615,206	489,964
Bank BDs, affiliated bank total assets > \$10bln & TAL ≤ 5% of total assets	83	223,474	42,684	11,749
Bank BDs, affiliated bank total assets ≤ \$10bln & TAL > 5% of total assets	0	0	0	0
Bank BDs subject to section 203 of EGRRCPA <sup>76</sup>	113	108,457	17,743	6,463
Non-bank BDs	3,642	1,001,819	316,691	202,668
Total	3,895	4,044,782	992,324	710,844

The costs of the 2013 final rule no longer apply to the entities that qualify for the statutory exemption, which, as discussed above, is already fully in effect.<sup>77</sup> To the extent that the compliance costs related to section 13 of the BHC Act and the relevant implementing regulations would otherwise have been passed along to customers and counterparties of the affected entities, the cost reductions associated with section 203 of EGRRCPA may be flowing through to customers and counterparties in the form of reduced transaction costs and increased willingness to engage in trading activity, including intermediation that facilitates risk-sharing, as well as covered fund activities.<sup>78</sup>

The statutory exemption in section 203 of EGRRCPA provided entities thereby excluded from section 13 of the BHC Act with greater flexibility in pursuing certain types of potentially profitable trading and covered fund activities. Additionally, to the extent that section 13 of the

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<sup>76</sup> *Id.*

<sup>77</sup> In the proposal, the SEC estimated based on data as of Q3 2017 that annual compliance cost savings for SEC-regulated entities due to section 203 of EGRRCPA may be as high as approximately \$16,626,385 (= 2,035 hours x 0.18 x (Attorney at \$409 per hour) x 111). Based on data as of Q4 2018 we now estimate these annual compliance cost savings may be as high as approximately \$14,682,037 (=2,035 hours x 0.18 x (Attorney at \$409 per hour) x 98).

<sup>78</sup> See 79 FR 5778 for the agencies' estimated ongoing compliance and recordkeeping burdens related to the requirements of the 2013 final rule.



BHC Act may have previously reduced the ability or willingness of such entities to engage in permitted hedging, underwriting or market-making due to compliance costs, the statutory exemption may have facilitated access to capital and trading activity.

In the proposal, the SEC stated that some entities with \$10 billion or less in total consolidated assets and TAL equal to or less than 5 percent of its total consolidated assets may have responded to the statutory exemption by increasing or planning to increase their trading activity and covered funds activities, while still remaining under the applicable thresholds at the consolidated holding company level. Using Q4 2018 data, the SEC estimates that 21 such holding companies with 22 BD affiliates and available information about TAL have, on aggregate, total consolidated assets of approximately \$74.5 billion and gross TAL of approximately \$688 million.<sup>79</sup> The SEC further estimates that the gross TAL of these 21 holding companies that qualify for the exemption in section 203 of EGRRCPA and for which data is available increased by approximately \$98 million between Q4 2017 and Q4 2018 (from \$590 million in Q4 2017 to approximately \$688 million in Q4 2018). The SEC does not have information about the remaining banks and holding companies. However, the SEC is aware that, in total, 98 banks and holding companies that qualify for the exemption in section 203 of EGRRCPA and have affiliated BDs, can have, on aggregate, total gross TAL of no more than \$49 billion without exceeding either threshold and becoming subject to section 13 of the BHC Act.<sup>80</sup> Therefore, the SEC estimates that the increase in the aggregate TAL of all 98 affected banks and holding companies with SEC-regulated affiliates is likely no more than \$48.3

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<sup>79</sup> The current FR Y-9C and FR Y-9SP filing requirements limit data availability. As of Q4 2018, the SEC has information about TAL of 21 holding companies with 22 BD affiliates.

<sup>80</sup> This figure is based on a maximum of \$10 bln of total consolidated assets and a maximum TAL of 5 percent of total consolidated assets and is calculated as follows: 98 holding companies x \$10 bln total assets x 0.05 = \$49 bln.

billion.<sup>81</sup> The SEC continues to note that, if an increase in risk-taking by such affected entities is observed by market participants that provide capital to them, these capital providers may demand additional compensation for bearing more financial risk, which may decrease the profitability of the entity's trading and covered fund activities.

Because EGRRCPA was enacted relatively recently (on May 24, 2018) and a realignment of a BD's balance sheet may necessarily be gradual, it is not yet clear if the economic effects of sections 203 and 204 are fully realized in the relevant securities markets. However, Table 1 reports changes in the size and trading activity of different groups of BDs within an approximate 12 month window around the enactment of section 203 of EGRRCPA. Comparing BD statistics in Q4 2017 against Q4 2018, the number of bank-affiliated BDs that qualify for the exemption in section 203 of EGRRCPA increased by one. BDs that qualify for the exemption in section 203 of EGRRCPA decreased their assets by approximately \$8 billion, and their holdings by between approximately \$1.1 billion (using a measure of holdings that excludes U.S. and Canadian government obligations and spot commodities) and approximately \$1.4 billion (using an inclusive measure of holdings).<sup>82</sup> In comparison, although the number of bank-affiliated BDs that do not qualify for the exemption in section 203 of EGRRCPA decreased by 5, such BDs

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<sup>81</sup> This figure is calculated as follows: \$49 bln – \$0.688 bln = \$48.312 bln. The SEC recognizes that these estimates may under- or overestimate the increases in trading activity that may occur as a result of section 203 of EGRRCPA for four primary reasons. First, the profitability of trading activity is likely to strongly influence incentives to engage in trading activity and may vary depending on trading strategy, market sector, and time period measured. Second, growth in a holding company's total consolidated assets is influenced by business models, prevailing market conditions, industry competition, bank merger and acquisition activity, among other factors. Third, this estimate assumes that no affected entity will enter or exit the industry as a result of the statutory exclusion. Fourth, this estimate assumes for purposes of this economic analysis that small holding companies that file form FR Y-9SP, which does not contain data on TAL, do not currently have any TAL.

<sup>82</sup> This discussion describes changes in assets and holdings in absolute terms since percentage measures magnify changes when initial levels of a measure are extremely low.

experienced in the aggregate an approximately \$90.8 billion increase in total assets, and an increase in holdings between \$62.1 billion (excluding U.S. and Canadian government obligations and spot commodities) and approximately \$95.1 billion (using an inclusive measure of holdings).

It is difficult to draw meaningful causal inference from these trends in assets and holdings due to a number of methodological considerations. First, the effect of enactment of section 203 of EGRRCPA is confounded by other changes, notably the market participants' potential reaction to other statutory relief for small banking entities in EGRRCPA (such as sections 201, 207, and 210 of EGRRCPA) and to the agencies' proposed amendments to the 2013 final rule that affected bank-affiliated BDs that do not qualify for the exemption in section 203 of EGRRCPA. Second, there is a lack of "control" and "treatment" groups that are likely to satisfy the "parallel trends" assumption required for a difference-in-difference analysis.<sup>83</sup> Third, quarterly reporting of FOCUS data is insufficiently frequent to perform an announcement effect analysis of BD risk taking and asset size in the days immediately before and immediately after the enactment of EGRRCPA. Fourth, as discussed in the proposal, certain entities can influence whether they qualify for the statutory exemption in section 203 of EGRRCPA by adjusting their balance sheets and trading books, which is likely to confound inference. Fifth, the relief in section 203 of EGRRCPA may have been at least partly anticipated by market participants.<sup>84</sup> In addition, in the proposal, the SEC anticipated spillover effects between bank-affiliated BDs that qualify for the exemption in section 203 of EGRRCPA and bank-affiliated BDs that do not. Both anticipation and spillover effects contaminate the estimation of regulatory effects.

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<sup>83</sup> Causal inference using difference-in-difference generally requires that differences between treatment and control groups along the dimension of interest (*e.g.*, risk-taking) are constant in the absence of regulatory intervention.

<sup>84</sup> See U.S. Department of the Treasury, "A Financial System that Creates Economic Opportunities: Banks and Credit Unions" (June 2017).

Thus, the SEC cannot conclusively determine whether the above changes in BD characteristics arose as a result of the passage of EGRRCPA. However, the above statistics indicate that bank-affiliated BDs that qualify for the exemption in section 203 of EGRRCPA slightly decreased their balance sheet and trading activity.<sup>85</sup> This group of BDs continues to represent a very small fraction of the BD industry, representing approximately 2.3% of all BD assets and between 0.7% and 1.4% of all BD holdings.

In the proposal, the SEC noted that certain banking entities with more than \$10 billion in total consolidated assets and/or TAL greater than 5 percent of total consolidated assets may be incentivized to shrink their balance sheets or trading activity under the thresholds. The SEC recognized that this may reduce the willingness of such banking entities to serve as intermediaries, and may also reduce the potential for market impacts from the failure of a given entity.

As can be seen in Table 1, the number of bank-affiliated BDs not subject to section 203 of EGRRCPA has declined by five between Q4 2017 and Q4 2018. These counts are impacted by the fact that holding companies may have multiple BD subsidiaries, and by occurrences of mergers and other changes in the organizational structure within holding companies. Bank-affiliated BDs that do not qualify for the exemption in section 203 of EGRRCPA have experienced an increase in assets (by \$91 billion) and holdings (by between \$62.1 billion and \$95.1 billion depending on the measure). BDs unaffiliated with banks or bank holding companies have also increased their assets (by \$195 billion) and holdings (by between \$21.2

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<sup>85</sup> As discussed above, BDs that qualify for the exemption in section 203 of EGRRCPA exhibited a decrease in holdings by approximately \$1.4 billion when including the holdings of U.S. and Canadian government obligations and spot commodities, and by approximately \$1.1 billion when excluding them. Thus, such government obligations and spot commodities accounted for approximately \$277 million or 20% of the decrease in the inclusive measure of holdings by BDs that qualify for the exemption in section 203 of EGRRCPA.

billion and \$57.9 billion depending on the measure), despite the backdrop of the aggregate decline in the number of BDs in the industry.

These observations suggest that aggregate industry and macroeconomic factors may be driving a general increase in the size and trading books of BDs. Such observations may also indicate that banking entities not subject to section 203 of EGRRCPA may currently be unable or unwilling to shrink their balance sheets and trading books in order to fall under the relevant thresholds in section 203 of EGRRCPA. The SEC continues to believe that banking entities not excluded from section 13 of the BHC Act pursuant to section 203 of EGRRCPA may weigh the size and complexity of each banking entity's trading activities and organizational structure, and the profitability of their banking and trading books, against the magnitude of expected compliance savings from not being subject to section 13 of the BHC Act. The SEC continues to note that, similar to the discussion above, due to methodological limitations (including, among others, confounding events and the likely violation of the parallel trends assumption), these observations of trends do not allow us to draw a causal inference. It is also possible that the effects of section 203 of EGRRCPA are still being realized, and the observed trends may under- or overestimate potential long-term shifts in risk-taking by entities that qualify for the exemption in section 203 and those that do not.

In the proposal, the SEC stated that to the degree that statutory changes in section 203 of EGRRCPA may have contributed to an increase in the gross volume of TAL, there may be an increase in risk-taking among entities no longer subject to section 13 of the BHC Act. However, this need not necessarily be the case. For example, a hedging transaction that offsets a risk exposure from an existing asset would increase the reported gross TAL without necessarily producing a net increase in the risk born by the entity. As described above, bank affiliated BDs

that qualify for the exemption in section 203 of EGRRCPA have not increased their gross volume of TAL over the analyzed time period. The SEC continues to recognize that bank-affiliated BDs that qualify for the exemption in section 203 of EGRRCPA account only for approximately 2.3% of aggregate BD assets and between 0.7% and 1.4% of aggregate BD holdings. Thus, the statutory exemption affects only a small fraction of the BD industry. Moreover, the SEC continues to recognize that both the risks and the returns from newly permissible trading and covered fund activities by individual bank-affiliated BDs are likely to be passed along to their customers and counterparties.

In the proposal, the SEC recognized that potential shifts in risk-taking due to section 203 of EGRRCPA, as discussed above, may lead to two competing effects. On the one hand, if affected entities are now able to bear risk at a lower cost than their customers (*i.e.*, because such entities are no longer subject to section 13 of the BHC Act), increased risk-taking could promote secondary market trading activity and capital formation in primary markets, and thus increase access to capital for issuers. Similarly, the statutory exemption may increase banking entities' covered fund activities, which may broaden investment opportunities for investors in covered funds and facilitate access to capital by companies in which those funds invest. On the other hand, the statutory exemption may increase risk-taking by individual SEC-regulated entities, the amount of covered fund activity in which they engage, as well as total risk in the financial system, which may ultimately negatively impact issuers and investors. However, as noted above, the maximum potential increase in aggregate trading activity of entities that qualify for the exemption in section 203 of EGRRCPA that would not trigger section 13 of the BHC Act compliance is likely limited to \$48.3 billion.<sup>86</sup> Moreover, as shown above, empirically such

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<sup>86</sup> See *supra* footnote 81.

changes in risk-taking by SEC registrants that qualify for the exemption in section 203 of EGRRCPA so far remain very low in absolute terms, and such BDs continue to represent a very small fraction of the industry as measured by both assets and trading book size. The SEC continues to recognize that an increase in risk-taking by entities that qualify for the exemption in section 203 of EGRRCPA, to the degree that it is observed by providers of capital, may increase their cost of capital and reduce the profitability of such risk-taking.

In the proposal, the SEC outlined two primary effects of section 203 of EGRRCPA on competition. First, entities exempt from section 13 of the BHC Act under EGRRCPA are no longer required to incur related compliance costs and, thus, may have a competitive advantage relative to similarly situated entities above the thresholds. The availability of the statutory exemption may incentivize entities near the thresholds to decrease the size of their balance sheet, trading activity, or both in order to become exempt from section 13 of the BHC Act, resulting in greater competition between entities with consolidated assets and TAL near the thresholds. As demonstrated in Table 1 and the discussion above, the number of BDs above the thresholds in section 203 of EGRRCPA has declined only by five, while their assets and trading activity have actually increased. Thus, to date the above competition effects may have been muted.

Second, section 203 of EGRRCPA may have placed domestic entities subject to the statutory exemption on a more even competitive footing with foreign firms that are not subject to the substantive prohibitions and compliance costs related to section 13 of the BHC Act and its implementing regulations. In addition, section 203 of EGRRCPA may have improved the competitive position of affected domestic entities relative to foreign banking entities that are subject to section 13 of the BHC Act as a result of such foreign banking entities utilizing the

exemptions related to activity outside of the United States.<sup>87</sup> The SEC has no data on the activity or risk-taking of foreign BDs that are not registered with the SEC and are affiliated with banks or bank holding companies. No such data is publicly available and commenters did not provide data enabling such quantification. As a result, the SEC is unable to empirically evaluate this effect.

Prior to the enactment of EGRRCPA, a bank-affiliated RIA could not share the same name or a variation of the same name as a hedge fund or private equity fund that it organized and offered under an exemption in section 13 of the BHC Act.<sup>88</sup> Section 204 of EGRRCPA changed this condition for bank-affiliated RIAs that meet certain requirements and provided them with flexibility in name sharing for corporate, marketing, promotional, or other purposes. To the extent that name sharing effectively and easily conveys the identity of a fund's RIA and preserves the brand value, section 204 of EGRRCPA improved bank-affiliated RIAs' ability to compete for investor capital with RIAs that are not affiliated with banks.

Section 204 also provided bank-affiliated RIAs that can share a name with a fund with a competitive advantage over those bank-affiliated RIAs that cannot share a name with a fund because they do not meet the statutory conditions for name sharing. This competitive effect can be attenuated since bank-affiliated RIAs in the latter group may change their names to avoid sharing the same name or a variation of the same name as a depository institution, any company that controls it, or any bank holding company. However, such a name change by bank-affiliated RIAs may have associated costs that would not apply to bank-affiliated RIAs that do not have the

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<sup>87</sup> See 12 U.S.C. 1851(d)(1)(H) and (I) (2017); See §§ \_\_.6(e) and \_\_.13(b) of the 2013 final rule.

<sup>88</sup> See § \_\_.11 of the 2013 final rule; 12 U.S.C. 1851(d)(1)(G) (2017).



name of a depository institution, any company that controls it, or any bank holding company in their names.

In addition, the statutory name-sharing provision may have reduced some investors' search costs in the capital allocation process by making it easier for some investors to identify the bank-affiliated RIA of funds, to the extent that such advisers and funds could share names as a result of the statutory exemption.

The SEC reiterates that the economic effects discussed above stem from the statutory provisions of EGRRCPA that are fully in effect, and, therefore, the SEC believes that these effects may be already partly realized. The SEC believes that the conforming amendments to the implementing regulations will have no additional costs, benefits, or effects on efficiency, competition, and capital formation.

The agencies have received a number of comments on the proposal, some supporting<sup>89</sup> and others questioning<sup>90</sup> the agencies' codification of section 203 of EGRRCPA, and comments opposing the statutory exemption for community banks.<sup>91</sup> As discussed above, the agencies believe that the final amendments conform the regulations implementing section 13 of the BHC Act with the statutory amendments made pursuant to sections 203 and 204 of EGRRCPA with no exercise of agency discretion. As such, the SEC believes there are no reasonable alternatives to the final rule.

## **G. Congressional Review Act**

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<sup>89</sup> See ICBA Letter; IAA Letter; LosHuertos and Mount Letter; NAFCU Letter. *See also* section II.

<sup>90</sup> See Competitive Enterprise Institute Letter; Competitive Enterprise Institute et. al. Letter; Luetkemeyer Letter. *See also* section II.

<sup>91</sup> See Tinee Carraker Letter, Rodger Cunningham Letter.

Pursuant to the Congressional Review Act,<sup>92</sup> the Office of Information and Regulatory Affairs has designated these rules as not a “major rule,” as defined by 5 U.S.C. § 804(2).

## **H. Effective Date**

Pursuant to Section 553(d) of the Administrative Procedure Act,<sup>93</sup> the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule or if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction. The Agencies find that there is good cause for setting an effective date that is less than 30 days after publication of this substantive rule because this final rule merely conforms the 2013 final rule to the EGRRCPA statutory amendments. Furthermore, the final rule recognizes a statutory exemption from the definition of “banking entity,” and relieves restrictions applicable to the naming of a hedge fund or private equity fund. Accordingly, the final rules are effective as of [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

## **List of Subjects**

### **12 CFR Part 44**

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

### **12 CFR Part 248**

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<sup>92</sup> 5 U.S.C. 801 *et. seq.*

<sup>93</sup> 5 U.S.C. 553(d).

Administrative practice and procedure, Banks, banking, Conflict of interests, Credit, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Securities, State nonmember banks, State savings associations, 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, Trusts and trustees.

## **17 CFR Part 75**

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**

#### **12 CFR Chapter I**

##### **Authority and Issuance**

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency 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 citation 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.

##### **Subpart A – Authority and Definitions**

- 2. In subpart A, § 44.1 is amended by revising paragraph (c) to read as follows:

##### **§ 44.1 Authority, purpose, scope, and relationship to other authorities.**

\* \* \* \* \*

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the OCC is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include national banks, Federal branches and Federal agencies of foreign banks, Federal savings associations, Federal savings banks, and any of their respective subsidiaries (except a subsidiary for which there is a different primary financial regulatory agency, as that term is defined in this part), but do not include such entities to the extent they are not within the definition of banking entity in section 44.2(c) of this subpart.

\* \* \* \* \*

- 3. In subpart A, § 44.2 is amended by revising paragraph (r) to read as follows:

#### **§ 44.2 Definitions**

\* \* \* \* \*

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) An insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) An insured depository institution if it has, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

\* \* \* \* \*

### **Subpart C — Covered Funds Activities and Investments**

- 4. In subpart C, § 44.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

#### **§ 44.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund**

\* \* \* \* \*

(d) \* \* \*

(9) \* \* \*

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 44.11(a)(6).

\* \* \* \* \*

- 5. In subpart C, § 44.11 is amended by revising paragraph (a)(6) to read as follows:

**§ 44.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund**

(a) \* \* \*

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

\* \* \* \* \*

# **BOARD OF GOVERNORS OF THE FEDERAL RESERVE**

## **12 CFR Chapter II**

### **Authority and Issuance**

For the reasons set forth in the Common Preamble the Board amends chapter II of title 12 of the Code of Federal Regulations as follows:

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

- 6. The authority citation 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.*

### **Subpart A — Authority and Definitions**

- 7. In subpart A, §248.1 is amended by revising paragraph (c) as follows:

#### **§ 248.1 Authority, purpose, scope, and relationship to other authorities**

\* \* \* \* \*

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the Board is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include any state bank that is a member of the Federal Reserve System, any company that controls an insured depository institution (including a bank holding company and savings and loan holding company), any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act (12 U.S.C. 3106), and any subsidiary of the foregoing other than a subsidiary for which the OCC, FDIC, CFTC, or SEC is the primary financial regulatory agency (as defined in section 2(12) of the Dodd-Frank

Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5301(12)), but do not include such entities to the extent they are not within the definition of banking entity in § 248.2(c) of this subpart.

\* \* \* \* \*

- 8. In subpart A, Section 248.2 is amended by revising paragraph (r) as follows:

**§ 248.2 Definitions**

\* \* \* \* \*

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

\* \* \* \* \*

**Subpart C — Covered Funds Activities and Investments**

- 9. In subpart C, § 248.10 is amended by revising paragraph (d)(9)(iii) as follows:

**§ 248.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund**

\* \* \* \* \*

(d) \* \* \*



(9) \* \* \*

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 248.11(a)(6).

\* \* \* \* \*

■ 10. In subpart C, § 248.11 is amended by revising paragraph (a) as follows:

**§ 248.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund**

(a) \* \* \*

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

\* \* \* \* \*

# **FEDERAL DEPOSIT INSURANCE CORPORATION**

## **12 CFR Chapter III**

### **Authority and Issuance**

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation amends chapter III of Title 12, Code of Federal Regulations as follows:

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

- 11. The authority citation for Part 351 continues to read as follows:

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

#### **Subpart A — Authority and Definitions**

- 12. In Subpart A, section 351.1 is amended by revising paragraph (c) as follows:

#### **§ 351.1 Authority, purpose, scope and relationship to other authorities.**

\*\*\*\*\*

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to insured depository institutions for which the FDIC is the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, and certain subsidiaries of the foregoing, but does not include such entities to the extent they are not within the definition of banking entity in section 351.2(c) of this subpart.

\*\*\*\*\*

- 13. In subpart A, section 351.2 is amended by revising paragraph (r) as follows:

#### **§ 351.2 Definitions**

\*\*\*\*\*

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

\*\*\*\*\*

#### **Subpart C – Covered Funds Activities and Investments**

■ 14. In subpart C, section 351.10 is amended by revising paragraph (d)(9)(iii) as follows:

**§ 351.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

\*\*\*\*\*

(d) \*\*\*

(9) \*\*\*

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 351.11(a)(6).

\*\*\*\*\*

■ 15. In subpart C, section 351.11 is amended by revising paragraph (a) as follows:

**§ 351.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.**

(a) \*\*\*

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

\*\*\*\*\*

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Chapter II

### Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission amends Part 255 to chapter II of Title 17 of the Code of Federal Regulations as follows:

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

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

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

#### **Subpart A — Authority and Definitions**

- 17. In Subpart A, section 255.1 is amended by revising paragraph (c) as follows:

#### **§ 255.1 Authority, purpose, scope and relationship to other authorities.**

\* \* \* \* \*

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the SEC is the primary financial regulatory agency, as defined in this part, but does not include such entities to the extent they are not within the definition of banking entity in section 255.2(c) of this subpart.

\* \* \* \* \*

- 18. In subpart A, Section 255.2 is amended by revising paragraph (r) as follows:

**§ 255.2 Definitions**

\* \* \* \* \*

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

\* \* \* \* \*

**Subpart C — Covered Funds Activities and Investments**

- 19. In subpart C, section 255.10 is amended by revising paragraph (d)(9)(iii) as follows:

**§ 255.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund**

\* \* \* \* \*

(d) \* \* \*

(9) \* \* \*

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 255.11(a)(6).

\* \* \* \* \*

- 20. In subpart C, section 255.11 is amended by revising paragraph (a) as follows:

**§ 255.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund**

(a) \* \* \*

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

\* \* \* \* \*

# COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Chapter I

### Authority and Issuance

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission amends Part 75 to chapter I of Title 17 of the Code of Federal Regulations as follows:

### **PART 75 — PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS**

- 21. The authority citation for Part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

- 22. In Subpart A, section 75.1 is amended by revising paragraph (c) as follows:

#### **§ 75.1 Authority, purpose, scope and relationship to other authorities.**

\*\*\*\*\*

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the CFTC is the primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Act, but does not include such entities to the extent they are not within the definition of banking entity in section 75.2(c) of this subpart.

\*\*\*\*\*

- 23. In subpart A, section 75.2 is amended by revising paragraph (r) as follows:

#### **§ 75.2 Definitions**

\*\*\*\*\*



(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of \$10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

\*\*\*\*\*

#### **Subpart C – Covered Funds Activities and Investments**

■ 24. In subpart C, section 75.10 is amended by revising paragraph (d)(9)(iii) as follows:

**§ 75.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

\*\*\*\*\*

(d) \*\*\*

(9) \*\*\*

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 75.11(a)(6).

\*\*\*\*\*

- 25. In subpart C, section 75.11 is amended by revising paragraph (a) as follows:

**§ 75.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.**

(a) \*\*\*

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

\*\*\*\*\*

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY RULEMAKING TITLED  
“REVISIONS TO PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING  
AND CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND  
PRIVATE EQUITY FUNDS.”]

Dated: 6/26/2019

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Morris Morgan  
*Senior Deputy Comptroller and Chief Operating Officer.*

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY RULEMAKING TITLED  
“REVISIONS TO PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING  
AND CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND  
PRIVATE EQUITY FUNDS.”]

By order of the Board of Governors of the Federal Reserve System, July 8, 2019.

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Margaret McCloskey Shanks,  
*Deputy Secretary of the Board.*

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY RULEMAKING TITLED  
“REVISIONS TO PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING  
AND CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND  
PRIVATE EQUITY FUNDS.”]

Federal Deposit Insurance Corporation.  
By Order of the Board of Directors.  
Dated at Washington, DC, on June 18, 2019.

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**Valerie J. Best,**  
*Assistant Executive Secretary.*

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY RULEMAKING TITLED  
“REVISIONS TO PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING  
AND CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND  
PRIVATE EQUITY FUNDS.”]

Securities and Exchange Commission

Date: July 5, 2019

J. Lynn Taylor  
Assistant Secretary

[THIS SIGNATURE PAGE RELATES TO THE INTERAGENCY RULEMAKING TITLED “REVISIONS TO PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING AND CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND PRIVATE EQUITY FUNDS.”]

Issued in Washington, DC, on July 9, 2019, by the Commission.

Christopher Kirkpatrick,

*Secretary of the Commission.*