

**DEPARTMENT OF TREASURY**  
**Office of the Comptroller of the Currency**  
**12 CFR Part 44**  
**Docket No. [OCC-2018-0029]**  
**RIN [1557-AE47]**

**FEDERAL RESERVE SYSTEM**  
**12 CFR Part 248**  
**Docket No. [R-16XX]**  
**RIN [7100-AF XX]**

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

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

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

**Proposed 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:** Notice of proposed rulemaking.

**SUMMARY:** The OCC, Board, FDIC, SEC, and CFTC (individually, an Agency, and collectively, the Agencies) are requesting comment on a proposal to amend the regulations implementing section 13 of the Bank Holding Company Act (BHC Act) in a manner consistent with the statutory amendments made pursuant to sections 203 and 204 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Specifically, the statutory amendments (1) exclude from section 13's 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 and (2) amend 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:**

*Comment date:* Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**. Comments on the Paperwork Reduction Act burden estimates must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title “**Proposed Revisions to Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds**” to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

*OCC:* Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “**Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds**” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”:** Go to [www.regulations.gov](http://www.regulations.gov).

Enter “Docket ID [OCC-2018-0029]” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- **E-mail:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

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

- **Hand Delivery/Courier:** 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- **Fax:** (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “[Docket ID OCC-2018-0029]” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- **Viewing Comments Electronically:** Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID [OCC-2018-0029]” in the Search box and click “Search.” Click on “Open Docket Folder” on

the right side of the screen and then “Comments.” Comments can be filtered by clicking on “View All” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. Supporting materials may be viewed by clicking on “Open Docket Folder” and then clicking on “Supporting Documents.” The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally:** You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

*Board:* You may submit comments, identified by [Docket No. R-16XX; RIN 7100-AF XX], by any of the following methods:

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

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket and RIN numbers in the subject line of the message.

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

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. All public comments are available from the Board’s website at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified

for technical reasons or to remove sensitive personal information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street, NW. (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

*FDIC:* You may submit comments, identified by [RIN 3064-AE88] by any of the following methods:

- **Agency website:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency website.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand Delivered/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- **E-mail:** [comments@FDIC.gov](mailto:comments@FDIC.gov). Include the [RIN 3064-AE88] on the subject line of the message.
- **Public Inspection:** All comments received must include the agency name and [RIN 3064-AE88] for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 or by telephone at (877) 275-3342 or (703) 562-2200.

*SEC:* You may submit comments by the following methods:

### **Electronic Comments**

- Use the SEC’s internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include [File Number S7-14-18] on the subject line.

### **Paper Comments**

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to [File Number S7-14-18]. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC’s website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the SEC’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that the SEC does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the SEC or SEC staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the SEC’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

*CFTC*: You may submit comments, identified by [RIN 3038-AE72] and “Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds,” by any of the following methods:

- **Agency website:** <https://comments.cftc.gov>. Follow the instructions on the Web site for submitting comments.

- **Mail:** Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- **Hand delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [www.cftc.gov](http://www.cftc.gov) and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in CFTC Regulation 145.9.1. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from [www.cftc.gov](http://www.cftc.gov) that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, 202-649-6360; Tabitha Edgens, Senior Attorney; Mark O'Horo, 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:* Page Conkling, Senior Supervisory Financial Analyst, (202) 912-4647, Kevin Tran, Supervisory Financial Analyst, (202) 452-2309, Amy Lorenc, Financial Analyst, (202) 452-5293, David Lynch, Deputy Associate Director, (202) 452-2081, David McArthur, Senior Economist, (202) 452-2985, Division of Supervision and Regulation; Flora Ahn, Special Counsel, (202) 452-2317, Gregory Frischmann, Senior Counsel, (202) 452-2803, or Kirin Walsh, Attorney, (202) 452-3058, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

*FDIC:* Bobby R. Bean, Associate Director, [bbean@fdic.gov](mailto:bbean@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, Elizabeth Sandoe, Senior Special Counsel, Carol McGee, Assistant Director, or Josephine J. Tao, Assistant Director, at (202) 551-5777, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, and Nicholas Cordell, Senior Counsel, Matthew Cook, Senior Counsel, Aaron Gilbride, Branch Chief, Brian McLaughlin Johnson, Assistant Director, and Sara Cortes, Assistant Director, 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 Agencies.<sup>3</sup> The

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<sup>1</sup> 12 U.S.C. 1851. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was enacted on July 21, 2010. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company Act of 1956.

<sup>2</sup> See 12 U.S.C. 1851.

<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

Agencies adopted final rules implementing section 13 of the BHC Act in December 2013.<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>

## **II. Recently Enacted Statutory Revisions to the Volcker Rule**

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended section 13 of the BHC Act by modifying the definition of “banking entity,” to exclude certain small firms from section 13’s restrictions and by permitting a banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.<sup>6</sup>

The Agencies are proposing to amend the regulations implementing section 13 of the BHC Act in a manner consistent with the statutory amendments made by EGRRCPA.

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

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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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) (the “2013 final rule”).

<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>

EGRRCPA modifies the scope of the term “banking entity” to exclude certain community banks and their affiliates. Therefore, an insured depository institution and its affiliates generally are not “banking entities” if 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. Therefore, the statutory exclusion does not apply to a 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.

Pursuant to Section 203 of EGRRCPA, the term “insured depository institution” does not include an institution that does not have, and is not controlled by a company that has: (i) more

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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> Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, §§ 203, 204 (May 24, 2018). Section 203 amended section 13(h)(1)(B) of the BHC Act to narrow the scope of the term “banking entity” 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.

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. Consistent with the statute, the Agencies are proposing to modify the definition of “insured depository institution” in § \_\_.2(r) of the 2013 final rule in order to conform that definition with Section 203 of EGRRCPA. Under the proposal, an insured depository institution would need to satisfy two conditions to qualify for the exclusion from the definition of “banking entity.” 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.

As described above, the exclusion would be available only if both the threshold regarding total consolidated assets and the threshold regarding total consolidated trading assets and liabilities are not exceeded. The Agencies believe that insured depository institutions that qualify for the exclusion in this proposal regularly monitor their total consolidated assets and total trading assets and liabilities for other purposes. Therefore, the Agencies do not believe that the test described above would impose any new burden on banking institutions. Rather, 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 described above.

#### **B. Modification of Name-Sharing Restrictions of the Volcker Rule**

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>10</sup> Section 204 of EGRRCPA amended section 13 of the BHC Act to permit a hedge fund or private equity fund<sup>11</sup> 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.”

Consistent with the statute, the Agencies are proposing to modify the 2013 final rule’s name-sharing restriction to conform that restriction with Section 204 of EGRRCPA. Under the proposal, a hedge fund or private equity fund sponsored by a banking entity would be 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>13</sup> Specifically, these conditions would 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 International Banking Act of 1978.<sup>14</sup> The third condition – that the name does not contain the word “bank” – was included in the name-sharing

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<sup>10</sup> 12 U.S.C. 1851(d)(1)(G)(vi) (2017).

<sup>11</sup> 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).

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

<sup>13</sup> Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, § 204 (May 24, 2018).

<sup>14</sup> 12 U.S.C. 1851(d)(1)(G)(vi)(I); 12 U.S.C. 1851(d)(1)(G)(vi)(II).

restriction by Section 204 of EGRRCPA but already is a condition under the 2013 final rule. Accordingly, the Agencies believe no additional modifications to the 2013 final rule are necessary to reflect this condition.

The proposal would also conform the 2013 final rule to the statutory change to the definition of “sponsor.”<sup>15</sup> Pursuant to Section 204 of EGRRCPA, 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, promotional, or other purposes, “except as permitted under subsection (d)(1)(G)(vi)” – that is, except as permitted pursuant to the name-sharing restriction as amended by EGRRCPA. Consistent with the statute, the Agencies are proposing to modify the definition of “sponsor” in §\_\_.10(d)(9) of the 2013 final rule in order to conform that definition with Section 204 of EGRRCPA.

### **III. Request for Comment**

The Agencies invite comment from all members of the public regarding all aspects of the proposal. This request for comment is limited to this proposal. The Agencies will carefully consider all comments that relate to the proposal. In particular, the Agencies request comment on the following questions:

*Question [\_\_].* Does the proposal provide sufficient clarity for firms to determine whether they qualify for the exclusion from the “banking entity” definition? If not, please explain why.

*Question [\_\_].* Does the proposal provide sufficient clarity for firms to determine whether a hedge fund or private equity fund sponsored by a banking entity is permitted to share

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<sup>15</sup> Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, § 204 (May 24, 2018).

the same name or a variation of the same name with an affiliated banking entity? If not, please explain why.

#### **IV. Administrative Law Matters**

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

Certain provisions of the proposal 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 proposal 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 proposal 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. Solicitation of Comments on the Use of Plain Language**

Section 722 of the Gramm-Leach Bliley Act<sup>16</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 invite comments on whether there are additional steps the Federal banking agencies could take to make the proposed rule easier to understand. For example:

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<sup>16</sup> Pub. L. 106-102, section 722, 113 Stat. 1338, 1471, 12 U.S.C. 4809 (1999).

• *Have the Agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?*

• *Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?*

• *Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?*

• *Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?*

• *What else could the Agencies do to make the regulation easier to understand?*

### **C. Initial Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA)<sup>17</sup> imposes certain requirements on agencies regarding any potential significant economic impact that a proposal may have on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.<sup>18</sup> Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the proposal is \$550 million or less in consolidated assets.<sup>19</sup> The Agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this proposal.

*Board*

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<sup>17</sup> 5 U.S.C. 601 *et seq.*

<sup>18</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).

<sup>19</sup> *See id.* 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).



The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The RFA requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

### 1. Reasons for the Proposal

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the regulations implementing section 13 of the BHC Act in conformance with the amendments to section 13 implemented by EGRRCPA. The proposal would therefore exclude from the definition of “banking entity” 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. 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. Such institutions would be exempt from the prohibitions and restrictions under section 13 of the BHC Act.

### 2. Statement of Objectives and Legal Basis

As discussed above, the Agencies’ objective in proposing amendments to the regulations implementing section 13 of the BHC Act is to conform the regulations to changes recently implemented 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>20</sup>

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

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<sup>20</sup> 12 U.S.C. 1851(b)(2).

The Agencies' proposal would apply to state member banks, bank holding companies, and savings and loan holding companies supervised by the Board that are small entities for purposes of the RFA.<sup>21</sup>

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

As discussed previously in the Paperwork Reduction Act section, the proposal 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 proposal would exempt small entities supervised by the Board from the reporting, recordkeeping, and all other requirements associated with section 13 of the BHC Act.

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

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

#### 6. Discussion of Significant Alternatives

The Board believes the proposed amendments will not have a significant economic impact on small banking entities supervised by the Board and therefore believes that there are no significant alternatives to the proposal that would reduce the economic impact on small banking entities supervised by the Board.

*OCC*

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<sup>21</sup> Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$550 million or less and trust companies with total assets of \$38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

The RFA requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, the SBA includes as small entities those with \$550 million or less in assets for commercial banks and savings institutions, and \$38.5 million or less in assets for trust companies.

The OCC currently supervises approximately 886 small entities.<sup>22</sup>

Pursuant to section 203 of EGRRCPA, OCC-supervised institutions are not “banking entities” within the scope of Section 13 of the BHCA if the OCC-supervised institution, and any company that controls the OCC-supervised institution, meet the statutory exclusion. The EGRRCPA statutory provisions took effect upon enactment. 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, and the proposed rule will have a *de minimis* economic impact, if any, on any OCC-supervised small entities. OCC-supervised institutions can determine their eligibility for the exclusion at the national bank level and federal savings association level on the basis of information they are separately required to file in their Consolidated Reports of Condition and Income. The OCC certifies that the proposal would not have a significant economic impact on a substantial number of small entities.

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<sup>22</sup> The number of small entities supervised by the OCC is determined using 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), the OCC counts the assets of affiliated financial institutions when determining if they should classify an OCC-supervised institution as a small entity. The OCC used December 31, 2017, 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*.

## *FDIC*

The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.<sup>23</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>24</sup> The FDIC supervises 3,575 depository institutions,<sup>25</sup> of which 2,763 are defined as small banking entities by the terms of the RFA.<sup>26</sup> Of the 2,763 small, FDIC-supervised institutions, all report having 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, and are therefore, covered by the proposed rule.

Although the proposed rule would conform the FDIC’s regulation to the statute in a way that is relevant to 2,763 small, FDIC-supervised institutions, the effects of the proposed rule itself would not have a significant economic impact. The statutory changes established by

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<sup>23</sup> 5 U.S.C. 601 *et seq.*

<sup>24</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>25</sup> FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

<sup>26</sup> Call Report: June 30, 2018.

EGRRCPA enabled certain institutions to engage in proprietary trading<sup>27</sup>, thereby potentially increasing the volume of such activity for affected banking entities. The proposed 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.

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 proposed rule would conform FDIC regulations with the statutory language enacted by EGRRCPA, this component of the proposed rule would have no direct effect on small, FDIC-supervised institutions.

Finally, the proposed 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 proposed rule would amend the FDIC's regulations to conform to this exclusion established

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<sup>27</sup> 12 CFR 351.3(a).

in EGRRCPA. In so doing, the proposed 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 proposed rule would introduce conforming changes that would exclude some small, FDIC-supervised institutions. Of these newly excluded institutions, the proposed rule would conform the Section 203 of EGRRCPA, which reduced recordkeeping, reporting, or disclosure requirements by up to 8 hours per institution, or approximately \$514.40 per year.<sup>28 29</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>30</sup> Thus, the FDIC believes the proposed rule would not have a significant economic impact on small, FDIC-supervised institutions.

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<sup>28</sup> 8 hours \* \$64.30 per hour = \$514.40.

<sup>29</sup> The estimated reduction in costs is calculated by multiplying 8 hours by an estimated total hourly compensation rate of \$64.30 per hour. According to the May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector the 75th 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 March 2018 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 35.5 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 2.28 percent between May 2017 and June 2018. Therefore, the adjusted average wage for a compliance officer is \$64.30 per hour.

<sup>30</sup> Call Report, June 30, 2018.

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

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

*SEC*

Pursuant to 5 U.S.C. section 605(b), the SEC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

As discussed in the **Supplementary Information**, the Agencies are proposing to revise 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 proposed revisions would generally apply to banking entities, including certain SEC-registered entities. 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 preliminarily believes that there are no banking entity registered investment advisers,<sup>31</sup> broker-dealers<sup>32</sup> security-based

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<sup>31</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



swap dealers, or major security-based swap participants that are small entities for purposes of the RFA.<sup>33</sup> For this reason, the SEC believes that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

The SEC encourages written comments regarding this certification. Specifically, the SEC solicits comment as to whether the proposed amendments could have an impact on small entities that has not been considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

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\$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>32</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>33</sup> Based on SEC analysis of Form ADV data, the SEC preliminarily believes that there are not a substantial number of registered investment advisers affected by the proposed amendments that would qualify as small entities under RFA. Based on SEC analysis of broker-dealer FOCUS filings and NIC relationship data, the SEC preliminarily believes that there are no SEC-registered broker-dealers affected by the proposed amendments that would qualify as small entities under RFA. With respect to security-based swap dealers and major 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).

## *CFTC*

Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, 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 proposing to revise 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 proposed revisions would 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>34</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>35</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>34</sup> The proposed revisions 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 proposed revisions. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

<sup>35</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>36</sup>

In the context of the proposed revisions to the 2013 final 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 covered by the 2013 final rule, and generally those that are registered have larger businesses. Similarly, the 2013 final rule applies to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses. The CFTC requests that commenters address in particular whether any of these commodity trading advisors, or other CFTC registrants covered by the proposed revisions to the 2013 final rule, are small entities for purposes of the RFA.

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 proposed revisions have been determined not to be small entities, the CFTC believes that the proposed revisions to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

The CFTC encourages written comments regarding this certification. Specifically, the CFTC solicits comment as to whether the proposed amendments could have a direct impact on small entities that were not considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

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<sup>36</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).

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

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>37</sup> in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider any administrative burdens that such regulation would place on insured depository institutions and the benefits of such regulation. In addition, section 302(b) of RCDRIA requires such new regulation 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, with certain exceptions.

The proposed rule would reduce burden and would 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>38</sup> Because delaying the effective date of the rule is not required and would serve no purpose, the Agencies propose to make the threshold increase effective on the first day after publication of the final rule in the Federal Register. The Agencies invite any comments that would inform the Agencies' consideration of RCDRIA.

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

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state,

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<sup>37</sup> 12 U.S.C. 4802(a).

<sup>38</sup> Additionally, the 30-day delayed effective date requirement under the Administrative Procedure Act is not applicable to a rule, such as the one proposed herein, that grants or recognizes an exemption or relieves a burden. 5 U.S.C. 553(d)(1).

local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation).

The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of \$100 million or more annually by state, local, and tribal governments, or by the private sector.

#### **F. SEC: Small Business Regulatory Enforcement Fairness Act**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”<sup>39</sup> the SEC requests comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

#### **G. SEC Economic Analysis**

The Agencies are proposing 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>40</sup> the proposal would 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

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<sup>39</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

<sup>40</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.

trading assets and liabilities that are 5 percent or less of total consolidated assets. The proposal would also amend 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.

The amendments to the 2013 final rule would reflect the statutory provisions of EGRRCPA that are already in effect, and we preliminarily believe that market participants are already responding to the statutory changes. Thus, the baseline against which we are assessing the effects of these proposed amendments incorporates both: (i) the enacted statutory provisions of sections 203 and 204 of EGRRCPA, and (ii) our understanding that banking entities with both total consolidated assets of \$10 billion or less and total consolidated trading assets and liabilities that are 5 percent or less of total consolidated assets are, consistent with EGRRCPA, no longer complying with the 2013 final rule. Any costs, benefits, and economic effects of the proposed amendments, 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.<sup>41</sup>

The SEC is mindful of the costs and benefits imposed by its rules. Certain SEC-regulated entities, such as broker-dealers (“BDs”) and registered investment advisers (“RIAs”), that fell under the definition of “banking entity” for the purposes of the Volcker Rule before the enactment of EGRRCPA are within the scope of the proposed amendments implementing

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<sup>41</sup> Because EGRRCPA was enacted recently, the economic effects of sections 203 and 204 may not yet be fully realized in the relevant securities markets.

sections 203 and 204 of EGRRCPA.<sup>42</sup> We estimate that there are as many as 126 bank-affiliated BDs with aggregate assets of approximately \$126.2 billion and aggregate holdings of approximately \$12.3 billion that are within the scope of these proposed amendments.<sup>43</sup> We estimate that, at most, 308 bank-affiliated RIAs could be affected by the proposed amendments.<sup>44</sup>

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<sup>42</sup> We believe 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. Our 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 the Volcker Rule 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). In addition, the use of the term “we” throughout this economic analysis refers only to the SEC and not to the other Agencies, except where otherwise indicated.

<sup>43</sup> These 126 broker-dealers are affiliated with 111 banks or bank holding companies. This estimate has been revised since the July 2018 release proposing amendments to the Volcker Rule based on a manual reclassification of the number of entities affected by EGRRCPA. This estimate includes broker-dealers for which data on total assets and/or trading assets and liabilities are 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, we believe that entities with missing data have low levels of trading activity and are likely affected by section 203 of EGRRCPA. To the degree that this may not be the case for some bank-affiliated broker-dealers, these figures may overestimate the number of affected entities. Broker-dealer holdings are estimated based on FOCUS reports data and defined as 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>44</sup> As estimated in the July 2018 release proposing amendments to the Volcker Rule (83 FR at 33525), there are, approximately, 308 bank-affiliated RIAs. We do 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, we estimate that these 308 banking-entity RIAs and 126 bank-affiliated BDs are also the SEC-regulated entities that may be able to engage in covered fund activities as a result of section 203 of EGRRCPA. We do 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.

The statutory exemption in section 203 of EGRRCPA provided entities thereby excluded from the Volcker Rule with greater flexibility in pursuing certain types of trading and covered fund activities that could be profitable and, thus, may have enhanced their profitability. To the extent that the compliance costs related to the Volcker Rule would otherwise have been passed along to clients and counterparties of the affected entities, the cost reductions associated with section 203 of EGRRCPA may be flowing through to counterparties and clients 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>45</sup> Additionally, to the extent that the Volcker Rule may have reduced the ability or willingness of affected 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. The costs of the 2013 final rule will no longer apply to the entities affected by the statutory exemption, which, as discussed above, is already fully in effect.<sup>46</sup>

Some entities with \$10 billion or less in total consolidated assets and trading assets and liabilities 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. We estimate that 23 such holding companies with broker-dealer affiliates and available information about trading assets and liabilities have, on aggregate, total consolidated

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<sup>45</sup> See 79 FR 5778 for the Agencies' estimated ongoing compliance and recordkeeping burdens related to the requirements of the 2013 final rule.

<sup>46</sup> Based on the hourly burdens estimated in the release adopting the 2013 final rule (79 FR at 5778) and the BD weight estimates in the July 2018 release proposing amendments to the Volcker Rule (83 FR at 33539), 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).



assets of approximately \$94.9 billion and gross consolidated trading assets and liabilities of approximately \$0.6 billion.<sup>47</sup> Although we do not have information about the remaining holding companies, we know that 111 parent firms with affiliated broker-dealers can have, on aggregate, total gross consolidated trading assets and liabilities of no more than \$55.5 billion without exceeding either threshold and becoming subject to the Volcker Rule. Therefore, we estimate that aggregate trading assets and liabilities of the affected holding companies with SEC-regulated affiliates that would not result in any of these companies becoming subject to the Volcker Rule is likely no more than \$54.9 billion.<sup>48</sup> We note that, if an increase in risk-taking by 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.

Banking entities with more than \$10 billion in total consolidated assets and/or trading assets and liabilities greater than 5 percent of total consolidated assets are incentivized to shrink

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<sup>47</sup> The current FR Y-9C and FR Y-9SP filing requirements limit data availability and, due to data completeness and delays, we base estimates on filings for the third quarter of 2017. We have information about trading assets and liabilities of 23 holding companies with 24 broker-dealer affiliates.

<sup>48</sup> This figure is calculated as follows: \$55.5 bln – \$0.6 bln = \$54.9 bln. We recognize 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 trading assets and liabilities, do not currently have any trading assets or liabilities.

their balance sheets or trading activity under the thresholds.<sup>49</sup> This may reduce the willingness of such banking entities to serve as intermediaries. At the same time, because the statutory exemption incentivizes such banking entities to have smaller balance sheets and trading books, section 203 may have reduced the potential for market impacts from the failure of a given entity. On aggregate, potential decreases in the balance sheets and trading activity of unaffected banking entities may partly offset increases in balance sheets and trading activity of affected entities. To the degree that statutory changes in section 203 of EGRRCPA increase the gross volume of trading assets and liabilities, there may be an increase in risk-taking. However, this need not always be the case. For example, a hedging transaction that offsets a risk exposure from an existing asset would increase the reported gross trading assets and liabilities without necessarily producing a net increase in risk exposure. We note that the affected bank-affiliated BDs account only for approximately 3.2% of aggregate BD assets and 1.24% of aggregate BD holdings. Thus, the statutory exemption affects only a small fraction of the broker-dealer industry. Nevertheless, even in the absence of significant aggregate effects, both the risks and the returns from newly permissible trading and covered fund activity by individual BDs are likely to be passed along to their investors and customers.

Potential shifts in risk-taking attributable to the statutory changes contained in section 203 of EGRRCPA and discussed above may result in two competing effects. On the one hand, if affected entities are now able to bear risk at a lower cost than their customers, 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

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<sup>49</sup> The extent to which this happens will depend on the size and complexity of each banking entity's trading activities and organizational structure, along with those of its affiliated entities and the magnitude of expected compliance savings from not being subject to the Volcker Rule.

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 affected entities that would not trigger Volcker Rule compliance is likely limited to \$54.9 billion. We continue to recognize that, if observed by providers of capital, an increase in risk-taking by affected entities may increase their cost of capital and reduce the profitability of such risk-taking.

Entities exempt from the Volcker Rule under EGRRCPA are no longer required to incur related compliance costs and may, thus, have a competitive advantage relative to similarly situated entities just above the thresholds. This may incentivize entities above the thresholds to decrease the size of their balance sheet, trading activity, or both in order to become exempt from the Volcker Rule, resulting in greater competition between entities with consolidated assets and trading assets and liabilities near the thresholds. Moreover, section 203 of EGRRCPA may have placed affected domestic entities on a more even competitive footing with foreign firms that are also not subject to the substantive prohibitions and compliance costs related to the Volcker Rule and its implementing regulations. In addition, it may have placed affected domestic entities in a potentially better competitive position relative to foreign banking entities that are subject to the Volcker Rule but may avail themselves of the exemptions related to activity outside of the United States.<sup>50</sup>

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<sup>50</sup> See §§ \_\_.6(e) and \_\_.13(b) of the 2013 final rule; See 12 U.S.C. 1851(d)(1)(H) and (I) (2017).

Prior to the enactment of EGRRCPA, a banking-entity 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 the Volcker Rule.<sup>51</sup> Section 204 of EGRRCPA changed this condition for banking-entity 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. In addition, the statutory name-sharing provision may have made it easier for some investors to identify the adviser of a fund, which may have reduced search costs related to the capital allocation process for some investors.

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

As discussed above, the proposed 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, we believe there are no reasonable alternatives to the proposed rules.

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<sup>51</sup> See § \_\_.11 of the 2013 final rule; 12 U.S.C. 1851(d)(1)(G) (2017).

### *Request for Comment*

The SEC requests comment on all aspects of the economic analysis of the proposed amendments. In particular, the SEC asks commenters to consider the following question:

1. Has the SEC accurately characterized the baseline, costs, benefits, and effects on competition, efficiency, and capital formation of the proposed amendments and alternatives with respect to SEC-regulated entities and securities markets? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the SEC take into account? Please provide quantitative information and ways of estimating any of the costs and benefits associated with the proposed amendments.

### **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**

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 proposes to amend 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.

- 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) 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) (A) 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:

(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 International Banking Act of 1978 (12 U.S.C. 3106); and

(2) 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 proposes to amend 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)**

- [XX]. 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**

- [XX]. In subpart A, section 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 section 248.2(c) of this subpart.

\* \* \* \* \*

■ [XX]. 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**

■ [XX]. In subpart C, section 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 section 248.11(a)(6).

\* \* \* \* \*

■ [XX]. In subpart C, section 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) (A) 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:

(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 International Banking Act of 1978 (12 U.S.C. 3106); and

(2) 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 proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

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

- [XX]. 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**

- [XX]. 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.

\*\*\*\*\*

- [XX]. 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**

■ [XX]. 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).

\*\*\*\*\*

■ [XX]. 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)(A) 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:

(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 International Banking Act of 1978 (12 U.S.C. 3106); and

(2) 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 proposes to amend 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**

- [XX].

The authority for part 255 continues to read as follows:

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

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

- [XX]. 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.

\* \* \* \* \*



- [XX]. 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**

- [XX]. 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).

\* \* \* \* \*

- [XX]. 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) (A) 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:

(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 International Banking Act of 1978 (12 U.S.C. 3106); and

(2) 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**

- [XX]. The authority citation for Part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

- [XX]. 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.

\*\*\*\*\*

- [XX]. 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**

■ [XX]. 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).

\*\*\*\*\*

■ [XX]. 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)(A) 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:

(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 International Banking Act of 1978 (12 U.S.C. 3106); and

(2) 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.

\*\*\*\*\*