Deutsche Bank

February 13, 2012

Department of the Treasury
Office of Domestic Finance
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20520

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20551

Re: Notice of Proposed Rulemaking Implementing the Volcker Rule - Impact on Repackaging Transactions

Federal Reserve Docket No. R–1432 and RIN 7100 AD 82
FDIC RIN 3064–AD85
OCC Docket ID OCC–2011–14
SEC File No. S7–41–11
CFTC RIN 3038–AD05

Dear Sirs/Mesdames:

Deutsche Bank AG (together with its affiliates, "**Deutsche Bank**") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System ("**Board**"), the Office of the Comptroller of the Currency ("**OCC**"), the Federal Deposit Insurance Corporation ("**FDIC**"), the Commodity Futures Trading Commission ("**CFTC**") and the Securities and Exchange Commission ("**SEC**") (collectively, the "**Agencies**") with respect to the Agencies' notice of proposed rulemaking ("**Proposed Rules**") to implement new Section 13 of the Bank Holding Company Act of 1956 ("**BHC Act**"), commonly referred to as the Volcker Rule.

This letter addresses the potential impact of the Proposed Rules on Deutsche Bank's role in arranging repackaging transactions for its clients. Deutsche Bank is submitting a separate comment letter that addresses the potential impact of the Proposed Rules on its fund-linked products business.

Deutsche Bank is concerned that legal entities used to facilitate repackaging transactions with customers – "Repack Vehicles" – would be inadvertently swept into the definition of "covered fund" and thereby become subject to the Volcker Rule. Although most Repack Vehicles have no U.S. nexus, they could fall within the

"foreign funds" prong of the proposed definition of "covered fund."[1] Other Repack Vehicles are captured by the Proposed Rules' broad Investment Company Act approach to defining hedge funds and private equity funds.

Application of the Proposed Rules in the repackaging context would adversely affect the ability of Deutsche Bank and other banking organizations to arrange repackaging transactions for its clients.

For example, if Repack Vehicles are "covered funds," Deutsche Bank could be precluded from acquiring the instruments issued by Repack Vehicles – which, under the Proposed Rules, could be considered "ownership interests" – for purposes of resale to Deutsche Bank's clients. In addition, the Agencies' proposed implementation of Section 13(f) of the BHC Act (so-called "**Super 23A**") could prohibit Deutsche Bank from entering into certain derivatives with Repack Vehicles if they are considered "covered funds." These derivatives are necessary to customize client exposure to assets held by the Repack Vehicles, which is an important feature in many repackaging transactions, and the inability of Deutsche Bank to write such derivatives would severely hamper its repackaging business.

To avoid these adverse and unintended consequences, Deutsche Bank recommends that the Agencies use their rulemaking authority under the Volcker Rule to adopt a definition of "covered fund" that focuses on the characteristics of traditional hedge funds and private equity funds. Under this approach, Repack Vehicles, which do not exhibit characteristics of traditional hedge funds or private equity funds and do not pose the types of risks that the Volcker Rule was intended to address, would be outside the scope of Section 13 of the BHC Act.

In addition to the recommendations contained in this letter, Deutsche Bank strongly supports the views expressed and recommendations made by the Securities Industry and Financial Markets Association, the American Bankers Association, the Financial Services Roundtable and The Clearing House Association (collectively, the "**Trade Associations**") in their joint comment letter on the covered funds portion of the Proposed Rules ("**Trade Associations Joint Funds Letter**"). Deutsche Bank also strongly supports the comment letters submitted by the International Swaps and Derivatives Association ("**ISDA**"), the American Securitization Forum ("**ASF**"), the Association of German Banks (Bundesverband deutscher Banken) and the German Investment and Asset Management Association (BVI Bundesverband Investment und

[1] Deutsche Bank notes that the offshore exemption contained in Section 13(d)(I) of the BHC Act and Section _.13(c) of the Proposed Rules would not fully mitigate the adverse impact of the Proposed Rules on repackaging transactions. For example, in order to rely on the offshore exemption, Deutsche Bank and similarly situated banking organizations must cease arranging repackaging transactions for U.S. investors. This would reduce the depth and breadth of the U.S. Repack market and limit the options available to U.S. investors that wish to purchase Repack Notes. Moreover, as currently drafted, the offshore exemption in Section _.13(c) of the Proposed Rules would not provide relief from Super 23A. The application of Super 23A in the repackaging context would have a debilitating effect on the ability of banking entities to enter into derivative transactions with Repack Vehicles to tailor customer exposure to the underlying assets.

Asset Management e.V.) regarding the Proposed Rules. In addition, Deutsche Bank agrees with the comments submitted by the Institute of International Bankers ("**IIB**") regarding the extraterritorial application of the Volcker Rule.

In particular, Deutsche Bank supports the recommendations in the Trade Associations Joint Funds Letter regarding the appropriate implementation of Super 23A, as their proposed approach would mitigate the unintended consequences of that provision. The adoption of these recommendations is particularly important if the Volcker Rule were to apply to repackaging transactions.

Deutsche Bank also agrees with the IIB that the Agencies should limit the extraterritorial scope of the Volcker Rule and provide clear guidance regarding its cross-border application. Specifically, Deutsche Bank supports the IIB's recommendation that the Agencies limit the extraterritorial application of Super 23A. For example, Super 23A should not prohibit covered transactions between a foreign bank or its affiliate, *acting from outside the United States*, and a covered fund that the foreign bank or affiliate sponsors, advises or organizes and offers.

Furthermore, Deutsche Bank supports the recommendation in the Trade Associations Joint Funds Letter that the statutory exemptions for underwriting, market-making related activities and risk-mitigating hedging should apply equally to both the covered funds and the proprietary trading portions of the Volcker Rule.

I. Executive Summary

- ❖ Repackaging is a customer facilitation service involving the transfer of assets to a Repack Vehicle that issues notes secured by such assets to a banking entity's clients.
- ❖ The overly broad definition of "covered fund" in the Proposed Rules could inadvertently sweep in many Repack Vehicles, thereby subjecting them to the Volcker Rule.
- ❖ Application of the Volcker Rule in the repackaging context would adversely affect the ability of banking entities to arrange transactions for clients to help customize their risk exposure to certain assets.
- ❖ The Agencies should use their rulemaking authority under the Volcker Rule to adopt a definition of "covered fund" that focuses on the characteristics of traditional hedge funds and private equity funds, rather than solely on the Investment Company Act exemption on which the issuer relies, or would rely.
- ❖ This approach ensures that Repack Vehicles, which do not exhibit hedge fund or private equity fund characteristics and do not pose the types of risks that the Volcker Rule was intended to address, would be outside the scope of the Volcker Rule.

II. Business Overview

1. Benefits to Clients

Repackaging is a customer facilitation service involving the transfer of assets to a special purpose vehicle (a "**Repack Vehicle**") that issues notes secured by such assets ("**Repack Notes**"). The Repack Notes are purchased by Deutsche Bank's clients. A Repack Vehicle typically uses derivatives to customize noteholders' exposure to the underlying assets.

From a client perspective, Repack Notes offer many advantages over direct investments in the underlying assets. By providing customized risk exposure to the underlying assets, Repack Notes provide greater alignment with a client's risk and investment profile. For example, a client may wish to invest in corporate bonds denominated in Euros without being exposed to foreign exchange risk. To serve the needs of this client, Deutsche Bank would arrange for the creation of Repack Notes that carry the credit risk, but not the foreign exchange risk, arising from the corporate bonds. Clients may also prefer Repack Notes over direct investments in the underlying assets because the assets are not accessible in their local market.

2. Deutsche Bank's Role in the Repackaging Process

In a repackaging transaction, Deutsche Bank performs traditional bank customer facilitation functions. Repack Notes further clients' investment goals by allowing clients to gain customized economic exposure to one or more asset classes without having to directly invest in such assets. Deutsche Bank typically works with its clients, based on each client's risk and investment profile, to determine the types of risk (such as credit risk) that will be borne by the Repack Noteholders and the types of risk (such as interest rate or foreign exchange risk) that will be retained by Deutsche Bank.

As arranger of the repackaging transaction, Deutsche Bank will select the Repack Vehicle that will issue the Repack Notes.[2] A single Repack Vehicle may issue multiple series of Repack Notes. Each series is contractually ring-fenced from other issuances because noteholders' claims are contractually limited to the specific assets securing their Repack Notes. Deutsche Bank does not own any Repack Vehicles; all equity interests in the Repack Vehicles are owned by charitable trusts that are not affiliated with Deutsche Bank. Deutsche Bank is not represented on the boards of these charitable trusts. Nor does Deutsche Bank exercise managerial control over any Repack Vehicle.

Each Repack Vehicle has its own board of directors, composed of a majority[3] of independent directors, that reviews the documents relating to a proposed

[2] Instead of using an existing Repack Vehicle, Deutsche Bank sometimes arranges for the creation of a new Repack Vehicle.

[3] For administrative purposes, Deutsche Bank currently maintains a minority representation on the boards of directors of most Repack Vehicles.

repackaging transaction with the benefit of independent legal advice. If a repackaging transaction is approved by the board of the Repack Vehicle, Deutsche Bank will proceed to transfer the underlying assets to that entity. To accommodate a client's request for customized exposure to the underlying assets, Deutsche Bank may also enter into one or more derivatives transactions with the Repack Vehicle.

Typically, Repack Vehicles initially issue the Repack Notes to Deutsche Bank or one of its affiliates, which in turn sells them to its clients. The resale to clients typically occurs on the same day as their initial issuance. Deutsche Bank intermediates the transaction between the Repack Vehicle and the client in order to fulfill its know-your-customer obligations under applicable laws. Typically, Deutsche Bank assumes no principal risk in acting as an intermediary between the client and the Repack Vehicle.[4]

Throughout the duration of a Repack Note, the underlying assets in the Repack Vehicle generally remain "static" and are not actively traded or managed by Deutsche Bank or a third party investment manager.[5] As explained further below, this and other characteristics of Repack Vehicles clearly distinguish them from hedge funds and private equity funds.

III. Adverse Impact of the Proposed Rules on the Provision of Repackaging Services to Clients

Deutsche Bank offers repackaging services to clients in multiple jurisdictions, including the United States. To the extent Repack Notes are offered to Deutsche Bank's U.S. clients, the Repack Vehicle issuing these securities would typically rely on the exemptions contained in section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (the "**Investment Company Act**"). Accordingly, these Repack Vehicles could fall within the broad definition of "covered fund" contained in Section __.10(b)(1) of the Proposed Rules.

Nearly all of the Repack Vehicles that deliver repackaging services to Deutsche Bank's customers are incorporated outside the United States and a small percentage of Repack Notes issued by these Repack Vehicles are sold to U.S. residents. However, even foreign Repack Vehicles that do not *actually* offer Repack Notes to U.S. persons could fall within the "foreign funds" prong of the proposed "covered fund" definition because that prong focuses on whether a foreign issuer would be required to rely on the exemptions in section 3(c)(1) or 3(c)(7) of the Investment Company Act if, *hypothetically*, the issuer were organized under U.S. law, its securities were offered to U.S. residents or offered pursuant to U.S. law.[6]

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[4] Typically, if payment is not received from the customer that has committed to purchase the Repack Notes, the Repack Notes will be cancelled.

[5] Occasionally, a third party or Deutsche Bank retains the right to replace existing assets with new assets pursuant to specified criteria or upon the occurrence of certain trigger events, such as nonperformance of an asset.

[6] Section __.10(b)(1)(iii) of the Proposed Rules.

Treating Repack Vehicles as "covered funds" and subjecting them to the Volcker Rule would severely undermine Deutsche Bank's ability to provide repackaging services to its clients in any jurisdiction. For example, due to the close economic relationship between the performance of a Repack Note and the performance of the underlying assets held by a Repack Vehicle, there is risk that Repack Notes could be construed as "ownership interests" such that Deutsche Bank may be prohibited from acquiring them for the purpose of resale to its clients.[7]

Deutsche Bank is also concerned that under an expansive interpretation of the term "sponsor," certain of Deutsche Bank's roles in arranging repackaging transactions for its clients could be construed as sponsorship of the Repack Vehicles. If this were to occur, then the Agencies' proposed implementation of Super 23A could prohibit Deutsche Bank from entering into the swaps and other derivatives with Repack Vehicles that are necessary to tailor clients' risk exposure to the underlying assets.

Specifically, Section __.16 of the Proposed Rules would prohibit a banking entity from entering into "covered transactions" as defined in Section 23A of the Federal Reserve Act – which includes derivatives transactions that give rise to credit exposure[8] – with covered funds for which the banking entity acts as sponsor, investment manager or investment adviser. Hence, Deutsche Bank could be prohibited from entering into a foreign exchange swap or other derivative with a Repack Vehicle that is designed to provide Repack Noteholders with exposure to the credit risk, but not the foreign exchange or other risk, of the underlying assets.[9]

IV. An Attribute-Based Definition of "Covered Fund"

The adverse consequences discussed above should be avoided so that Deutsche Bank and other banking entities can continue to arrange repackaging transactions that meet the needs of their customers. This result could best be achieved by adopting a definition of "covered fund" that focuses on the traditional characteristics of hedge funds and private equity funds. As explained further below, an attribute-based approach to defining "covered fund" would exclude Repack

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[7] *See* 76 Fed. Reg. at 68,897 ("[The proposed definition of 'ownership interest'] focuses on the attributes of the interest and whether it provides a banking entity with economic exposure to the profits and losses of the covered fund, rather than its form. To the extent that a debt security or other interest of a covered fund exhibits substantially the same characteristics as an equity or other ownership interest . . . the Agencies could consider such instrument an ownership interest as an 'other similar instrument.'").

[8] Section 608 of the Dodd-Frank Act expands the definition of "covered transaction" in Section 23A of the Federal Reserve Act to include a derivative transaction with an affiliate, to the extent that the transaction causes a bank or a subsidiary to have credit exposure to the affiliate.

[9] As noted earlier, Deutsche Bank supports the recommendation in the Trade Associations Joint Funds Letter that Super 23A be implemented in a way that mitigates its unintended consequences and incorporates the exemptions identified in Section 23A of the Federal Reserve Act. Deutsche Bank also supports the recommendation in the IIB comment letter that the Agencies limit the extraterritorial application of Super 23A.

Vehicles from the Volcker Rule because they do not possess the features of hedge funds and private equity funds and do not pose the types of risks that the Volcker Rule was intended to address.[10]

1. The Agencies Have the Legal Authority to Adopt an Attribute-based Approach to Defining "Covered Fund"

Deutsche Bank believes the Agencies have the authority to adopt an attribute-based approach to defining "covered fund." In this respect, Deutsche Bank strongly supports the legal analysis contained in the Trade Associations Joint Funds Letter regarding the Agencies' rulemaking and interpretative authority with respect to the terms "hedge fund" and "private equity fund."

Deutsche Bank also notes that Section 13(b)(2) of the BHC Act requires the Agencies to "adopt rules to carry out this section," which rules are to "assur[e], to the extent possible," that implementation of the Volcker Rule will "protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board."[11]

The Agencies have rightly interpreted this general and broad grant of rulemaking authority as requiring them to issue rules and interpret terms in Section 13 that give effect not only to the text of the statute but also to the "goals" of the Volcker Rule.[12]

An overly broad definition of "covered fund" that sweeps in entities that do not exhibit traditional characteristics of hedge funds and private equity funds is clearly not a goal of Section 13 of the BHC Act.[13] On the contrary, the legislative history strongly suggests that Congress not only intended, but expected, the Agencies to use their broad interpretative discretion and rulemaking authority to narrow the definition of "hedge fund" and "private equity fund" so that the Volcker Rule only applies to traditional hedge funds and private equity funds.

The following colloquy between Representative Barney Frank, co-sponsor of the Dodd-Frank Act and former chairman of the House Financial Services Committee, and Representative Jim Himes, member of the House Financial Services Committee,

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[10] As argued at length in the Trade Associations Joint Funds Letter, Deutsche Bank further believes that a cost-benefit analysis of the sort required by recent judicial determinations would elucidate the broader economic and social costs that the Proposed Rules would impose on bank customer facilitation activities involving entities that do not exhibit characteristics of traditional hedge funds and private equity funds. *See Business Roundtable* v. *SEC*, 647 F.3d 1144 (D.C. Cir. 2011).

[11] BHC Act § 13(b)(2)(A) *and* (B)(ii).

[12] 76 Fed. Reg. at 68,928 ("In implementing the covered funds provisions of section 13 of the BHC Act, the Agencies have proposed to define and interpret several terms used in implementing these provisions and the goals of section 13.")

[13] In the preamble to the Proposed Rules, the Agencies themselves acknowledge that the definition of hedge fund and private equity fund is overly broad and captures many entities that "would not usually be thought of as a 'hedge fund' or 'private equity fund.'" *See* 76 Fed. Reg. at 68,897.

evidences Congressional concern about the "excessive regulation" that would result from an overly broad definition of "covered fund":

> **Mr. Himes**. . . . Because the [Volcker Rule] uses the very broad Investment Company Act approach to define private equity and hedge funds, it could technically apply to lots of corporate structures, and not just the hedge funds and private equity funds. I want to confirm that when firms own or control subsidiaries or joint ventures that are used to hold other investments, that the Volcker Rule won't deem those things to be private equity or hedge funds and disrupt the way the firms structure their normal investment holdings.
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> **Mr. Frank**. . . . The point the gentleman makes is absolutely correct. We do not want these overdone. We don't want there to be excessive regulation. And the distinction the gentleman draws is very much in this bill, and we are confident that the regulators will appreciate that distinction, maintain it, and we will be there to make sure that they do.[14]

Similarly, in its study of the Volcker Rule ("**FSOC Study**"), the Financial Stability Oversight Committee ("**FSOC**") recommended that the Agencies "consider criteria for providing exceptions with respect to certain funds that are technically within the scope of the 'hedge fund' and 'private equity fund' definition in the Volcker Rule but that Congress may not have intended to capture in enacting the statute."[15] Deutsche Bank believes Section 13(b) of the BHC Act authorizes the Agencies to adopt an attribute-based approach to defining "covered fund" so as to give effect to the goals of the Volcker Rule as intended by Congress.

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[14] 156 Cong. Rec. H5226 (daily ed. June 30, 2010) (emphasis added). *See also* the colloquy between Senators Dodd and Boxer, 156 Cong. Rec. S5904 (daily ed. July 15, 2010); colloquy between Representatives Frank and Himes, 156 Cong. Rec. H5226 (daily ed. June 30, 2010).

This reading has textual support as well. Under the traditional canon of statutory interpretation of *noscitur a sociis*, a particular word in a statute gains meaning from the company it keeps. *See, e.g.*, *Logan v. United States*, 552 U.S. 23, 30–32 (2007); *Washington State Dep't of Social and Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 382–85 (2003); *FTC v. Ken Roberts Co.*, 276 F.3d 583 (D.C. Cir. 2001); *Raila v. United States*, 355 F.3d 118, 120 (2d Cir. 2004).

In this regard, Deutsche Bank notes that the word "issuer" in the Section 13(h)(2) of the Bank Holding Company Act is surrounded by the multiple use of the term "fund" – for example, "such similar funds as the appropriate [Federal agencies] . . . may, by rule . . . determine." The word "fund" indicates a pooling of multiple investors' moneys for specific investment purposes, a concept distinct from an entity designed for a particular investor to give that investor exposure to some, but not all, of the attributes of a particular underlying.

[15] FSOC, Study & Recommendations on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds, at 7 (Jan. 18, 2011).

2. Characteristics of Traditional Hedge Funds or Private Equity Funds

The FSOC Study identified a number of characteristics of traditional hedge funds or private equity funds, including: (1) whether the fund "earn[s] an allocation based on fund performance including both realized and unrealized gains;" (2) the fund's "trading/investment strategy" and (3) whether "the fund borrow[s] or otherwise utilize[s] material leverage for the purpose of increasing investment performance."[16] The preamble to the Proposed Rules also sought comments on whether a similar set of attributes is "appropriate to describe a hedge fund or private equity fund that should be considered a covered fund."[17]

Deutsche Bank submits that the Agencies should define the term "hedge fund" as any issuer that both (i) would be an investment company under the 1940 Act but for Sections 3(c)(1) or 3(c)(7) of that Act and (ii) has all of the characteristics of a hedge fund as set forth in the Trade Associations Joint Funds Letter. Similarly, the Agencies should define the term "private equity fund" as any issuer that both (i) would be an investment company under the 1940 Act but for Sections 3(c)(1) or 3(c)(7) of that Act and (ii) has all of the characteristics of a private equity fund as set forth in the Trade Associations Joint Funds Letter.

V. Repack Vehicles Do Not Possess the Attributes of Traditional Hedge Funds or Private Equity Funds

Repack Vehicles do not exhibit the characteristics of traditional hedge funds or private equity funds, as identified in the FSOC Study and in the Trade Associations Joint Funds Letter. In most Repack Vehicles, the underlying assets remain "static" and are not actively managed by Deutsche Bank or a third party investment manager. These entities do not employ trading or investment strategies that are traditionally employed by hedge funds and private equity funds. In addition, Repack Vehicles do not compensate Deutsche Bank in the traditional manner of hedge fund/private equity fund management compensation arrangements. Finally, Repack Vehicles typically do not use material amounts of leverage to maximize returns for the banking entity's clients.[18]

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[16] FSOC Study at 62-63.

[17] 76 Fed. Reg. at 68,899 (Question 223); *see also* 76 Fed. Reg. at 68,898 (Question 221, requesting comments on whether the definition of "covered fund" should focus on the characteristics of an entity rather than whether it would be an investment company but for section 3(c)(1) or 3(c)(7) of the Investment Company Act).

[18] Deutsche Bank notes that in addition to Repack Vehicles, many other legal entities that do not possess the characteristics of traditional hedge funds and private equity funds, such as the special purpose entities used in synthetic securitizations, could be inadvertently swept into the broad definition of "covered fund" in the Proposed Rules. The adoption of an attributes-based approach to defining "covered fund" would ensure that those other legal entities do not become subject to the Volcker Rule.

1. Repack Vehicles Do Not Pose the Types of Risks that the Volcker Rule Was Intended to Address

The goals behind the Volcker Rule's restrictions on covered fund activities are to prevent banking entities from: (1) bailing out hedge funds and private equity funds that they sponsor or advise and (2) engaging in complex risk-taking through investments in such funds.[19] Deutsche Bank's repackaging activities do not present any of these risks and therefore should not be subject to the Volcker Rule.[20]

Deutsche Bank has few, if any, incentives to "bail out" Repack Vehicles. Incentives to bailout traditional hedge funds and private equity funds that employ complex investment strategies arise because investors rely on the expertise of the banking entity that organizes, sponsors or advises these funds. By contrast, repackaging clients understand – and have typically requested – their customized exposure to the underlying asset or assets securing their Repack Notes.

Deutsche Bank also does not engage in proprietary risk-taking in the course of arranging a repackaging transaction. Deutsche Bank typically enters into interest rate, credit and foreign exchange swaps and other derivatives with the Repack Vehicles to customize a client's economic exposure. Deutsche Bank manages the risks arising from these derivatives through its comprehensive risk management systems. The derivatives transactions Deutsche Bank enters into with Repack Vehicles are key features of many Repack Notes and are designed to facilitate customer investment goals not to engage in proprietary risk-taking.

2. Repackaging Is a Customer Facilitation Activity

Deutsche Bank arranges repackaging transactions to better serve the needs of its clients by providing them with customized exposure that matches their investment and risk profiles. The Volcker Rule was not intended to undermine the ability of banking entities to engage in client facilitation activities, as is evident from the various exceptions relating to the provision of financial services to clients.[21] In the Proposed Rules, the Agencies expressly recognized the importance of the "provision of client-oriented financial services by banking entities" and requested comments regarding the effect of the Proposed Rules on their "ability to continue to meet the

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[19] FSOC Study at 6.

[20] In the Proposed Rules, the Agencies were willing to exempt from the Volcker Rule entities that "do not raise the type of concerns which section 13 of the BHC Act was intended to address." 76 Fed. Reg. at 68,913. Repack Vehicles also do not give rise to these concerns and should be excluded from the definition of "covered funds."

[21] *See e.g.*, BHC Act § 13(d)(1)(G) (permitting banking entities to organize and offer a private equity or hedge fund in connection with the provision of traditional asset management services to its customers); 13(d)(1)(D) (permitting the purchase, sale, acquisition, or disposition of securities and other instruments on behalf of customers); 13(d)(1)(B) (permitting banking entities to engage in underwriting or market-making-related activities designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties).

needs and demands of their clients."[22] The FSOC Study also stated that the Volcker Rule's general prohibition on investing in or sponsoring hedge funds or private equity funds was designed to "confine the private fund activities of banking entities to customer-related services."[23] Former Federal Reserve Board Chairman Paul Volcker, who may be said to be the intellectual father of Section 13 of the BHC Act, has stated that the "basic role" of banks is to provide vital services to their customers.[24] These statements clearly suggest that the Volcker Rule was never intended to undermine a banking entity's ability to meet the demands of its customers through activities such as repackaging.

3. Preserving Banking Entities' Role as Financial Intermediaries

Deutsche Bank's role in arranging certain repackaging transactions may be characterized as that of a financial intermediary. As the FSOC Study observed, "Congress recognized that banking entities serve an important role as financial intermediaries" when it enacted the Volcker Rule.[25] Chairman Volcker has similarly stated that a "[b]asic operation[ ] of commercial banks," and one that is "integral to a well-functioning private financial system," is their "essential intermediating function."[26] It is therefore imperative that the Agencies implement the Volcker Rule in a way that preserves the ability of banking entities to engage in financial intermediary activities such as arranging repackaging transactions.

VI. Conclusion

The Agencies should adopt a definition of "covered fund" that focuses on the characteristics of traditional hedge funds and private equity funds. This approach would ensure that Repack Vehicles, which do not exhibit these characteristics and do not pose the types of risks that the Volcker Rule was intended to address, would be outside the scope of Section 13 of the BHC Act. Such an outcome would allow Deutsche Bank and other banking organizations to continue to arrange repackaging transactions, many of which provide clients with customized exposure to assets that accommodate their investment and risk profiles.

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[22] 76 Fed. Reg. at 68,916 (Question 316).

[23] FSOC Study at 6 (emphasis added).

[24] Paul A. Volcker, Statement before the Committee on Banking and Financial Services of the U.S. House of Representatives (Sept. 24, 2009).

[25] FSOC Study at 57.

[26] Paul Volcker, "How to Reform Our Financial System," New York Times (Jan. 31, 2010).

Deutsche Bank appreciates the opportunity to provide the Agencies with the foregoing comments and recommendations regarding the Proposed Rules.

Respectfully submitted,

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