Alternative Investment Management Association

David A. Stawick,
Secretary of the Commission,
Commodity Futures Trading Commission,
Three Lafayette Centre,
1155 21st Street NW,
Washington, DC 20581

Submitted electronically

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Dear Sirs,

Prohibition and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds, notice of proposed rulemaking

The Alternative Investment Management Association (AIMA) appreciates the opportunity to provide comments on the Securities and Exchange Commission's (SEC) notice of proposed rulemaking in relation to prohibitions and restrictions on proprietary trading and certain interest in, and relationships with, hedge funds and private equity funds (the 'Volcker Rule').

The Volcker Rule does not directly regulate hedge funds or the advisers to such funds generally. However, hedge funds have a variety of relationships with banks, as both counterparties and customers, and will inevitably be affected by the proposed rules.

Although AIMA understands and supports the overall aim with the Volcker rule, we would like to reiterate comments made earlier, that hedge funds are not inherently riskier than many traditional asset classes such as equity investments. AIMA is also concerned that Volcker may have a negative impact on overall market liquidity, which will not only be detrimental to hedge funds but to all market participants.

AIMA has more detailed comments in relation to the extensive extraterritorial scope of the proposed rules, the potential effects of non-US mandatory legal provisions and potential problems in relation to counterparty relationships, on which we elaborate below.

Extraterritorial scope of the proposed rules

AIMA is sympathetic to the need for rules, including anti-evasion rules. However, the rules are extensive in their extraterritorial scope and as a result are likely to catch some types of activity that are extremely remote to U.S. interests and where any potential stability gains appear minimal. For example, it is difficult to see why a non-U.S. banking entity investing in a non-U.S. fund should be caught merely because the fund has one U.S. investor. Considering the complexity of the rules and the associated risk for unintended consequences, AIMA would suggest that the extraterritorial scope of the rules should be reduced and if deemed necessary, reassessed and broadened at a later date.

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The potential effect of non-U.S. mandatory provisions

AIMA fears that there may be situations where a banking entity is prevented from complying with the Volcker Rule as a result of also being subject to a non-U.S. mandatory provision. For example, to engage in a prime brokerage transaction with a covered fund pursuant to _.16(a)(2)(ii) of the proposed rule, a banking entity must be in compliance with the limitations set forth in _.11 of the proposed rule with respect to a covered fund organised and offered by such banking entity. In addition, the chief executive officer of the banking entity must certify in writing annually that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligation of performance of the covered fund or of any covered fund in which such fund invests.

In the EU, detailed rules around custody obligations according to the Alternative Investment Fund Managers Directive (AIFMD) are currently being drafted. It is still unclear how these rules will come to apply where the prime broker is also the custodian of the assets and the extent to which the prime broker/custodian will indirectly have to guarantee the assets in relation to the fund. This would mean that a U.S. prime broker/custodian could not be used for a fund that falls under the AIFMD. This would of course be hugely disruptive. Similar situations could arise in other areas, where the mandatory obligations in one jurisdiction would prevent either the compliance with the Volcker Rule or the possibility for a fund to have any type of relationship with a U.S. banking entity.

Counterparty relationships

In our view, Section _.17: Other limitations on permitted covered fund activities, could be particularly problematic. This section specifically limits the permitted covered activities in cases where such activities could inter alia result in a material conflict of interest between the banking entity and its clients, customers, or counterparties. In our view a conflict of interest is inherent in a counterparty relationship, otherwise there would not be any interest in the transaction, and this criterion should therefore not be relevant in determining whether the activity with a counterparty should be deemed as impermissible or not. The issue of whether a material conflict of interest exists should only be relevant when there is an underlying fiduciary relationship.

If you have any questions in relation to the comments that we have made in this submission, or would like us to provide further information, please do not hesitate to contact me.

Yours sincerely,

Jiří Król
Director of Government and Regulatory Affairs