March 19, 2012

Secretary Timothy Geithner
Department of the Treasury
Docket No. OCC-2011-0014
RIN: 1557-AD44

Chairman Gary Gensler
Commodities Futures Trading Commission
CFTC-2012-0019-0001

Acting Comptroller John Walsh
Office of the Comptroller of the Currency
RIN: 1557-Ad44

Chairman Benjamin Bernanke
Board of Governors of the Federal Reserve System
Docket No. R-1432 RIN: 7100 AD 82

Acting Chairman Martin Gruenberg
Federal Deposit Insurance Corporation
RIN: 3064-AD85

Chair Mary Schapiro
Securities and Exchange Commission
RIN: 3235-AI07

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

Dear Secretary, Chairs, Acting Chair, and Acting Comptroller,

Thank you for this opportunity to comment on your consideration of rules that would implement the so called "Volcker Rule". I am just an ordinary citizen, investor and consumer. Yet I and others like me will certainly feel the results of your process. Future boom and bust cycles or loss of faith in the integrity of our free market system have a large effect on our financial lives and on our democracy.

I appreciate that your process is intended to protect tax payers and allow citizen access. Unfortunately, I am not paid for my work on making these comments as it appears many other commenters likely are. Because of this, my comments are certainly not a complete reflection of my concerns on this issue and cannot be as detailed as I would like. The cost of complicated rule making is a loss of transparency and average citizen involvement. 116 pages of jargon and "insiderese" is a daunting challenge to anyone, especially when it is not someone's job. Insiders only rule making does not inspire confidence in free markets and regulators. It only hurts markets, tax payers and consumers. Your goals are laudable but unless regulations have their intended effect, technical and extensive details are a waste of your time. Being open to public comment only helps if the public understands the proposed regulations and can participate.

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Good rule making is characterized by increasing confidence and certainty in meeting the goals the rules are meant to achieve. Trust in the rules and the market come from transparency, clarity and fairness. I am sure you are aware that these are an important part of your job but it bears repeating. Just as important though, is what is not part of your job. Ensuring that those regulated are convenienced should certainly not be a primary requirement. I was not comforted by the process when the first questions I read on page 8340 concern whether banks have enough time to implement regulations. These regulations are in response to a shock to our economy that happened in 2008. The banks were directly involved in delaying and complicating these rules through extensive lobbying over 4 years. They have little right to demand more time nor should they complain about how "Byzantine" rules are. They acted irresponsibly and put our markets, economy, country and democracy at risk. To now maintain they should get special treatment since the situation they created has inconvenienced them is a sign of hubris, not a legitimate concern in my mind.

I do not mean to imply that the impact of regulations on the regulated shouldn't be considered or that regulators should act capriciously . However, what should drive consideration is only whether or not delays support the goals for the regulations. Since one of the most important considerations for regulating should be reducing risk to tax payers through a stable economy, while limiting red tape as much as possible, it is always reasonable to consider not only the risk enforcement might bring but whether a regulation should be applied at all. In that vain, I would propose the notion of organization size and the associated risk should be a consideration for applying regulations. Larger risks should get more attention, sooner and with clear, thorough regulation. Promoting larger institutions also increases risk more than smaller. Too-big-to-fail has become a clarion call precisely because of this risk. To take this into account, regulators should scale regulations accordingly by applying regulations on larger institutions first and smaller institutions last or possibly not at all if their associated risk does not warrant regulation. One significant indicator of "size" is the extent to which the institution has received TARP or Federal Reserve credits. Another measure might be market capitalization or other financial measures that relate to the institution's place in the economy.

Though it is unproductive and unwise to make regulations just to be punitive, one of the consequences of increased size and risk to the economy should be accepting the responsibility for the risk to the economy created by an institution's size. The fact that there are punitive effects from regulations is not a reason to avoid making regulations as long as it serves the goals for the regulation. Part of the responsibility for creating risks to the economy through concentrated market share must be demonstrating financial soundness and low risk practices to regulators. This is especially true if the institution participates in deposit insurance, emergency support or other government programs where tax payers are on the hook through payments or guarantees or if the institution profits through speculation in market distortions using government guarantees. An example is the current oil commodity speculation that has driven up the price of oil. Even though the supply has increased according to the US EIA and demand is down, the price of oil is way up. Speculation has almost certainly played a significant role in this market inversion. According to a February 27, 2012 report in Forbes, Goldman Sachs reported a premium due to speculation of $.56 per gallon for the price of gasoline at the pump.

Banks that have access to Federal Reserve credit should not be allowed to engage in this speculation, even if allowed by the exemptions and loopholes in the proposed regulations. This uses government funds to victimize tax payers and damage the economy, directly violating the goals of regulation.

Specifically, Section __.3(b)(2)(i)(A)(2) (page 8343) and Section __.3(b)(2)(iii)(C) (page 8347) create major loopholes that expose the economy and taxpayers to unnecessary risk. While these risks may be manageable for small institutions, institutions that represent significant portions of our economy present unacceptable levels of risk and should at very least have these investments limited by regulation to the lesser of an absolute financial amount or a percentage of their market capitalization, whichever is less. Of course, limiting the exposure by eliminating these loopholes altogether would reduce regulatory complexity and increase trust in the regulations. It is not clear that accepting the risks involved gives any benefit to the economy.

Industry would claim that they are responsible for making capital available to provide liquidity to the markets and that eliminating these loopholes would further limit available capital. The problem with the argument is the clear history since 2008 where their capital became unavailable despite these institutions holding large amounts of capital (actually withholding it). Speculative based capital may have value when the economy is up but the flip-side is the risk the economy is exposed to when capital flows are suddenly reduced or withdrawn in downturns. Sudden reductions in liquidity in a downturn will amplify the downturn and is not an acceptable tradeoff for fair-weather liquidity. Without skin in the game, institutions that leverage government capital can simply withdraw to safe investments and wait for good times to return before again engaging in speculation that risks further downturns, or worse, simply lets the risked capital be lost and then turns to the government for emergency funding to maintain solvency. In either case, the economy or tax payer funds are at risk and the institution avoids a moral hazard, instigating institutional behavior that is hazardous to the free market and directly violating the goals of regulation. Their claim of service to the economy will withdraw capital at the worst time and actually increases risk, making crashes worse and delaying upturns by providing safe havens from a down market. This is the history we have seen and despite their claims, industry has demonstrated this expected behavior and past behavior is the best predictor of future behavior.

Please remember that your regulations are to protect the free market and tax payers, not the convenience or profit making of large institutions. Liquidity is only useful to the market if it is there when it is needed, not just when profits can be maximized for large institutions. There is no guarantee that these institutions will not restrict capital at the worst time for a market down turn. Any claim of supplying liquidity must come with guarantees that liquidity would be there when needed. I see nothing in the proposed rules that would achieve this and promises by profit making institutions will mean nothing if profits are at risk. A level playing field for all banks will maintain competitive positions for commercial banks in the U.S. market. Part of leveling could be limiting regulations to large banks that pose a significant risk to the economy. Smaller institutions whose size would limit their impact on the economy might be exempted to eliminate costs that cannot be scaled.

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Criticisms that these rules are too complicated or costly are ignoring the cost to the economy that a lack of rules and the complaining institutions own behavior have created. As I said above, I am all for making rules clear, simple and as available as possible to the public, but I see little reason for sympathy for institutions with large legal staffs and lobbyists that help make the rules as complicated as possible and then use that as an excuse to try to make the same regulations toothless.

Regards,

Tom Asprey