



March 21, 2012

Tim Johnson, Chairman  
Richard Shelby, Ranking Member  
Committee on Banking, Housing & Urban Affairs  
United States Senate  
534 Dirksen Senate Office Building  
Washington, DC 20510

Spencer Bachus, Chair  
Barney Frank, Ranking Member  
Committee on Financial Services  
United States House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

Department of the Treasury  
Office of the Comptroller of the Currency  
250 E Street SW, Mail Stop 2.3  
Washington, DC 20219

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitutional Avenue NW  
Washington, DC 20551

Robert Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429  
Attention: Comments, Federal Deposit Insurance  
Corporation

Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

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

**Re: ASF Request for Volcker Rule Effective Date Correction**

Ladies and Gentlemen:

The American Securitization Forum (“ASF”)<sup>1</sup> submits this letter to express our members’ concerns regarding the impending July 21, 2012 effective date (the “Expected Effective Date”) of the Volcker Statute and the likelihood that final implementing rules will not be released by

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<sup>1</sup> The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to [www.americansecuritization.com](http://www.americansecuritization.com).

that date. Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), which adds new Section 13 to the Bank Holding Company Act (the “Volcker Statute”) to prohibit proprietary trading activities and certain private fund investments by banking entities, requires the above-named regulatory agencies (the “Joint Regulators”) to adopt implementing rules. Proposed implementing rules were published in the Federal Register on November 7, 2011 (the “Proposed Regulations”)<sup>2</sup> and since then over 18,000 comment letters have been submitted to the Joint Regulators. This astounding number of comments is in addition to the thousands of comments these regulators have received on the myriad of other rules and regulations they are tasked with completing. Following these submissions, Treasury Secretary Timothy Geithner recently acknowledged that “there’s absolutely some work to do on [Volcker]”<sup>3</sup> and Federal Reserve Chairman Ben Bernanke recently stated his belief in testimony that final implementing rules to the Volcker Statute will not be completed by July 21, 2012.<sup>4</sup> However, Section 13(c) of the Volcker Statute provides that the Volcker Statute “shall take effect on the earlier of—

- (A) 12 months after the date of the issuance of final rules under subsection (b) [implementing rules adopted by the Joint Regulators]; or
- (B) 2 years after the date of enactment of this section [July 21, 2012].”

The timing concern we detail in this letter then is that, as drafted, the Volcker Statute will come into effect on July 21, 2012 without the benefit of appropriate implementing rules prior to that Expected Effective Date.

As part of the Joint Regulators’ authority to adopt implementing rules to the Volcker Statute, the Joint Regulators have proposed a number of exemptions to its broad prohibitions. One such exemption is the proposed loan securitization exemption in §\_\_13(d) of the Proposed Regulations. The proposed loan securitization exemption is based on Section 13(g)(2) of the Volcker Statute, which provides that nothing in the Volcker Statute is to be “construed to limit or restrict the ability of banking entities or nonbank financial companies ... to sell or securitize loans...” (the “Securitization Exclusion”). The Joint Regulators have solicited comment on their proposed loan securitization exemption, including whether its application of the statute’s Securitization Exclusion is appropriate and effective. In our comment letter dated February 13, 2012,<sup>5</sup> ASF provided a detailed explanation of why such exemption is both unworkable and much narrower than Congress intended through provision of the Securitization Exclusion.

The extremely broad proposed definition of “covered fund” and the absence of effective implementation of the Securitization Exclusion in the Proposed Regulations has caused uncertainty in the industry as to whether certain securitization vehicles will be considered

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<sup>2</sup> The Commodity Futures Trading Commission did not sign on to the joint Notice of Proposed Rulemaking issued by the other Volcker rulemaking agencies and elected to issue a separate proposal on January 11, 2012. Comments on that proposal are due April 16, 2012.

<sup>3</sup> See <http://www.bloomberg.com/news/2012-03-08/geithner-says-u-s-regulators-should-take-time-to-get-volcker-rule-right.html>.

<sup>4</sup> See <http://online.wsj.com/article/SB10001424052970203986604577253443334414270.html>.

<sup>5</sup> See [http://www.americansecuritization.com/uploadedFiles/ASF\\_Volcker\\_Rule\\_Comment\\_Letter\\_2-13-12.pdf](http://www.americansecuritization.com/uploadedFiles/ASF_Volcker_Rule_Comment_Letter_2-13-12.pdf).

“covered funds” in the final rules. In addition, there is uncertainty as to whether and the extent to which banking entities can enter into *new* covered transactions with covered funds after the Expected Effective Date, given the application of Section 13(f) of the Volcker Statute. While we do not believe this result is necessarily required by the conformance provisions of the Volcker Statute, the Board of Governors of the Federal Reserve System (the “Board”) indicated in the conformance rule adopting release that the conformance period is intended to provide banking entities a period of time after the effective date “to bring the activities, investments, and relationships of the banking entity or company that were commenced, acquired, or entered into *before* the Volcker Rule’s effective date into compliance with the Volcker Rule and the agencies’ implementing regulations” (emphasis added).<sup>6</sup> The Board’s interpretation of the conformance provisions, combined with uncertainty regarding the definition of “covered fund” in the final rules, has resulted in substantial uncertainty as to what is permitted after the Expected Effective Date. For this reason, failure to adopt final rules by the Expected Effective Date may result in significant disruption to many existing securitization entities that Congress did not intend to be covered by the Volcker Statute. In fact, we believe that prohibiting covered transactions by securitization entities *at any time* would be inconsistent with the requirements of the Securitization Exclusion.

If banking entities determine that they are prohibited after the Expected Effective Date from entering into new covered transactions with, for example, asset-backed commercial paper conduits<sup>7</sup> and issuers of tender option bonds,<sup>8</sup> there is potential for tremendous market disruption in advance of the Expected Effective Date. Because these vehicles cannot effectively operate without the benefit of, for example, liquidity facilities from their bank sponsors, a decision by a banking entity that it can no longer provide liquidity facilities to such vehicles is tantamount to the banking entity having been required to wind down the operation of those vehicles by the Expected Effective Date. If the Volcker Statute effective date is not extended beyond the time that the implementing rules are finalized, and banking entities cannot find sufficient comfort that

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<sup>6</sup> See 76 Fed. Reg. 8265 (Feb. 14, 2011).

<sup>7</sup> As we described in our letter, asset-backed commercial paper (“ABCP”) conduits effectively make loans and other extensions of credit to their customers through a vehicle that permits borrowers to receive the benefit of the low cost of commercial paper funding. ABCP has for nearly 30 years been a vital source of low-cost working capital for businesses of all kinds both in the United States and globally, from industrial companies to finance and service companies to governmental entities. Assets funded through these vehicles include auto loans, commercial loans, trade receivables, credit card receivables, student loans and many other types of financial assets. ABCP financing of corporate America and the global economy remains substantial. For example, approximately \$60 billion of automobile loans and leases, \$15 billion of student loans, \$19 billion of credit card charges, \$35 billion of loans to commercial borrowers and \$53 billion of trade receivables were financed by the U.S. ABCP market as of September 30, 2011. The total outstanding amount of ABCP sold in the U.S. market stood at \$344.5 billion as of January 18, 2012.

<sup>8</sup> As we described in our letter, the market for tender option bonds (“TOBs”), which has been in existence for nearly two decades, has come to play an important role in the larger municipal finance market by bringing together long term municipal borrowers and short term investors. If this market were eliminated, the reduction of access by municipal issuers to short-term investors will reduce the liquidity of municipal securities, which will lead to an increase in the borrowing costs for municipalities and other issuers of municipal securities, all at a time when many state and local governmental entities are in serious need of low-cost funding for important public projects and essential government activities. Correspondingly, there will be a decrease in short-term investments available for the tax-exempt money market funds, which have become a key component of the investment portfolios of individuals of all income brackets.

their securitization activities are in compliance with the Volcker Statute, some banking entities may curtail the activities of certain of these securitization vehicles or programs or even cease the operation of these securitization vehicles or programs before the Joint Regulators have had the opportunity to appropriately implement the Volcker Statute and the Securitization Exclusion.

Our membership was encouraged by Chairman Bernanke's statement at the February 29<sup>th</sup> hearing that the Board would not enforce a rule that isn't yet in place.<sup>9</sup> However, we believe that legal certainty through legislative or regulatory action is necessary to ensure a seamless transition without unintended consequences. We would encourage members of the Senate Banking Committee and the House Financial Services Committee to move legislation that would amend the implementation date of the Volcker Statute to extend beyond July 21, 2012 to at least 12 months after the date of the issuance of final rules by the Joint Regulators. This would provide the Joint Regulators with the time they require to fully consider the commentary to the Proposed Regulations and leave no ambiguity as to the application and effective date of the Volcker prohibitions with respect to all products. In the absence of such legislation, however, it will be critical for the appropriate regulators to issue a no action letter, general counsel letter, an interim final rule or some other form of formal regulatory guidance stating that they would not seek to enforce the provisions of the Volcker Statute against securitization industry participants until one year following the adoption of the final rules. Without such legislative or regulatory action, there is a potential for tremendous disruption to the securitization markets well before July 21, 2012 that may ultimately reduce critical credit availability to consumers, municipalities and small, medium and large businesses around the United States.

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ASF very much appreciates the opportunity to provide the foregoing comments. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at [tdeutsch@americansecuritization.com](mailto:tdeutsch@americansecuritization.com), Evan Siegert, ASF Managing Director, Senior Counsel, at 212.412.7109 or at [esiegert@americansecuritization.com](mailto:esiegert@americansecuritization.com) or Jim Johnson, ASF Managing Director, Public Policy, at 202.339.8607 or at [jjohnson@americansecuritization.com](mailto:jjohnson@americansecuritization.com).

Sincerely,



Tom Deutsch  
Executive Director  
American Securitization Forum

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<sup>9</sup> See <http://online.wsj.com/article/SB10001424052970203986604577253443334414270.html>.