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

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

February 13, 2012

**Re: Proposed Volcker Rule -- Comments on Definitions of Banking Entity and Covered Funds and on Investments in Covered Funds**

Ladies and Gentlemen:

Skandinaviska Enskilda Banken AB ("SEB"), a bank organized under the laws of the Kingdom of Sweden, is a leading Nordic provider of financial services. As a relationship bank in Sweden and the Baltic countries, SEB offers a wide range of banking, asset management, life insurance and other financial services. In Sweden, Denmark, Finland, Norway and Germany, SEB offers a full range of commercial and investment banking services to corporate and institutional clients. The international nature of SEB's business is reflected in its presence in some 20 countries worldwide, including the United States. On December 31, 2011, the SEB Group's total assets amounted to SEK 2,363 billion (approximately 352 billion in U.S. dollars) while its assets under management totaled SEK 1,261 billion (approximately 188 billion in U.S. dollars). SEB has approximately 17,000 employees.

SEB appreciates the opportunity to comment on the proposed Volcker Rule. (76 Fed. Reg. 68846) (Nov. 7, 2011) (the "Proposed Rule"). The recent financial turmoil has demonstrated clearly the need for adjustments to the current regulatory framework in order to promote stability for the global banking system and provide enhanced protection to investors and clients of financial institutions going forward. While SEB understands the reasons supporting the Proposed Rule, SEB also believes that it is important to avoid any new regulation that might restrict unnecessarily the availability of prudent financial services and products to bank customers while at the same time failing to promote safety and stability in global financial markets.

A coherent regulatory framework is critical to ensuring the resilient functioning of a global economy. In this respect, SEB supports the initiatives taken within the G20 but also recognizes the difficulty of achieving global consensus on economic and regulatory issues. We particularly appreciate the efforts of EU and US authorities in the Cross Atlantic Dialogue, and support initiatives to achieve a common

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understanding of the concept of “Mutual Recognition” among US and EU regulators. In our view, the discussion about regulatory reform (of which the debate about the Proposed Rule is an important component), goes beyond concerns about establishing a “Level Playing Field” for market participants in various jurisdictions to more general concerns of market fairness and efficiency. In this connection, a major concern for institutions like SEB is the potential applicability of at least two similar regulatory frameworks (EU-regulation and US-regulation) based on similar objectives and distinct but equally demanding regulatory standards. The requirements for written compliance policies and procedures, internal controls and management frameworks provide a good example of this. Certain initiatives under the Proposed Rule will require EU banks to adjust to US-standards, even though such EU banks are simultaneously subject to different, but equally demanding, European standards. Mutual recognition based on home country supervision in such matters would be more efficient and would enable banking institutions like SEB to provide customer services prudently and effectively.

While our concerns about the Proposed Rule can best be understood within this broader context, we have identified three particular issues as our immediate focus for purposes of this comment letter:

#### **I. Comments in Response to Question 6**

*“Are there any entities that should not be included within the definition of banking entity since their inclusion would not be consistent with the language or purpose of the statute or could otherwise produce unintended results? Should a registered investment company be expressly excluded from the definition of banking entity? Why or why not?”*

Summary Comment: In SEB’s view, the draft definition of “banking entity” is too broad and goes beyond the stated purpose of the Proposed Rule. We suggest that affiliates or subsidiaries of a banking entity that (A) make or manage investments in mutual funds (including UCITS under the EU framework) or (B) provide life insurance products and services should be excluded from the definition of banking entity so long as their assets are entirely ring-fenced from those of the parent bank, its holding company and any other subsidiaries respectively.

Explanation: The proposed definition of “banking entity” is very broad and captures many non-U.S. as well as U.S. entities. The Proposed Rule states that a “banking entity” includes: (i) any insured depository institution; (ii) any company that controls an insured depository institution; (iii) any company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978 (the “IBA”) and (iv) any affiliate or subsidiary of the foregoing. We are particularly concerned that the inclusion of “any affiliate or subsidiary of the foregoing” may include entities not intended or necessary to be included to meet the stated objectives of the Proposed Rule.

The primary objective of the Proposed Rule is to prevent banks and bank-like entities from engaging in risky transactions or business operations that could affect the safety and soundness of a bank and its core operations. The general stated approach (76 Fed. Reg. 68849) of the Proposed Rule is “to prohibit a banking entity from engaging in proprietary trading or acquiring or retaining an ownership interest in, or having certain relationships with, a covered fund, while permitting such entities to continue to provide client-oriented financial services.” (emphasis added). In this connection, it is significant that the Proposed Rule states (76 Fed. Reg. 68856) that, “An entity such as a mutual fund would generally not be a subsidiary or affiliate of a banking entity under this definition if the banking entity only provides advisory or administrative services to, has certain limited investments in, or

organizes, sponsors and manages a mutual fund (which includes a registered investment company) in accordance with BHC Act rules.”

In our view, certain investment fund activities traditionally conducted by many non-U.S. banks should explicitly be exempted from the definition of banking entity. As noted above, it seems to be the intent of the Federal Reserve Board and the other federal regulatory agencies (the “Agencies”) to exempt “certain client-oriented financial services” as well as mutual funds advised by a banking entity. However, because of the very broad inclusion of “any affiliate of the foregoing” in clause (iv) of the definition of banking entity, it appears that SEB, like many other non-U.S. banks, may be prohibited from providing traditional advisory and investment services to its clients, notwithstanding that the assets of such clients are isolated from the balance sheet of the bank which provides such services.

An example of this issue is provided in the manner in which SEB offers certain investment products to life insurance customers. Through an affiliated insurance company, SEB mediates discretionary investment products for life insurance policies provided by affiliated insurance companies and trades for the benefit of all policy holders through a general account. This presents issues under the Proposed Rule. A life insurance company typically invests in various asset classes to the benefit of its clients (i.e. the policy holders). Even though the legal structure and the regulatory environment may vary across jurisdictions, at least two different products are common:

- *Investments in unit-linked or portfolio bond products:* In this case the policy holder has a discretionary right to invest in mutual funds (unit linked) or other asset classes (portfolio bonds) that are specified under the agreement with the insurance company. The investments are selected on a discretionary basis by the policy holder from the array of portfolio options made available, but the legal ownership of the assets is with the insurance company and is reflected as an asset on the balance sheet of the insurance company. All risks and rewards connected to the investments are allocated to the underlying policy holder and eventually are paid out to such policy holder or his/her beneficiaries.
- *Traditional insurance investment products:* For these products, all policy holders have a common interest in the returns (and also risks) connected to collective investments made by the insurance company. However, it is the insurance company that makes all investment decisions on behalf of its clients. The assets are part of the insurance company’s balance sheet and the insurance company holds legal title to the investments.

In neither of these cases do any of the sponsoring bank, its holding company or any of its affiliates have any access to the assets under management - the assets concerned are inured to the risks taken by such companies. Notwithstanding this, such life insurance company investments would appear to be limited or, in some cases, prohibited by, the Proposed Rule because of the overly broad definition of “banking entity.” This result seems contrary to the objectives of the Proposed Rule because such investments are clearly “client-oriented financial services” intended to be excluded from coverage as explained in the general approach cited above (76 Fed. Reg. 68849). Life insurance companies in Sweden and elsewhere generally owe their clients a fiduciary duty whenever they act as their representatives. Investment teams acting on behalf of insurance companies and their clients should be free (within the limits imposed by fiduciary standards and insurance company regulation) to make appropriate investment decisions based on their professional assessment of alternative investment products. This would include making investments in plain vanilla products such as cash, equities and bonds (permissible under the Proposed Rule) as well as in alternative asset classes such as mutual

funds (permissible under the Proposed Rule) and hedge funds (apparently impermissible beyond the 3% limitation on investments in covered funds under the Proposed Rule). We believe this is an unnecessary limitation on providing client-oriented services and should be corrected, because the restriction fails to add materially, or at all, to the consumer and market protections which the Act seeks to secure. The most appropriate way to do this is to ensure that the Rule exempts the activities of all subsidiaries which are conducted for third parties under circumstances where the none of the banking entity, its holding company and any of their non-exempted affiliates can access the assets of the subsidiary in question. Alternatively if the logic is not accepted in the general case, the Proposed Rule should be amended to include a specific exemption for life insurance companies from the definition of “affiliate or subsidiary” to a banking entity so that such investments could continue to be made without regard to the Proposed Rule.

We also note that while, in the context of proprietary trading activities, regulated insurance companies are granted an exemption under the Proposed Rule, this same exemption is not extended to investments by insurance companies in covered funds. Restricting investments that insurance companies would otherwise make to manage their general account makes no sense when both domestic and foreign insurance companies are permitted under the Proposed Rule to conduct trading activities for their general account subject to the laws of their home country jurisdiction.

## II. Comments in Response to Question 217

*“Does the proposed rule’s definition of “Covered Fund” effectively implement the statute? What alternative definitions might be more effective in light of the “language and purpose of the statute?”*

Summary Comment: The definition of “Covered Fund” should treat U.S. and non-U.S. Fund structures equally and should not include open-ended mutual funds.

Explanation: The Proposed Rule defines (76 Fed. Reg. 68950) “Covered Fund” to mean “(i) an issuer that would be an investment company as defined in the Investment Company Act, but for Section 3(c)(1) or 3(c)(7) of that Act; (ii) a commodity pool, as defined in Section 1a(10) of the Commodity Exchange Act; (iii) any issuer, as defined in Section 2(a)(22) of the Investment Company Act, that is organized or offered outside the United States that would be a covered fund as defined in paragraphs (i), (ii) or (iv) of this section were it organized or offered under the laws, or offered to one or more residents of the United States or of one or more States; and (iv) any such similar fund as the appropriate banking agencies, the SEC and the CFTC may determine by rule, as provided in Section 13(b)(2) of the BHC Act.”

In our view, this definition of “Covered Fund” is overly broad and should exempt certain non-U.S. investment funds that are subject to prudent home country regulation and do not rely on exemptions similar to Section 3(c)(1) or 3(c)(7) of the Investment Company Act. Because the Proposed Rule generally prohibits a covered banking entity, acting as principal, from acquiring or retaining, directly or indirectly, any ownership interest in a “Covered Fund,” and because non-U.S. funds such as UCITS regulated under EU laws are likely to be deemed “Covered Funds,” the Proposed Rule would prevent a banking entity from investing in almost any non-U.S. fund (including both private funds and public funds) in a non-U.S. jurisdiction. This result occurs because, as written, the Proposed Rule seems to apply to all non-U.S. funds that, if they were subject to the Investment Company Act, would need to rely on Section 3(c)(1) or 3(c)(7) for an exemption. In this respect, we also note that it seems

unwarranted to permit banking entities to sponsor and invest in U.S. mutual funds while prohibiting similar investments in similar funds outside the United States. As written, the definition of Covered Fund raises concerns from the perspective of equal treatment and seems inconsistent with the objectives of the Proposed Rule. We encourage the Agencies to clarify the definition of Covered Fund in the final version of the Proposed Rule.

### **III. Comments in Response to Question 256**

*“Is the proposed rule’s approach to implementing the exemption that allows a banking entity to make or retain a permitted investment in a covered fund effective? If not, what alternative approach would be more effective and why?”*

Summary Comment: While we support the proposal to restrict all investments by a Banking Entity in Covered Funds to a maximum amount of 3 percent of the Banking Entity’s Tier 1 capital, we question the need for imposing a 3 percent restriction on investments in individual Covered Funds. Imposing such a limitation would not contribute to the overall objectives of the Proposed Rule. Further, it would have an adverse affect on the ability of a Banking Entity to develop and offer products designed to satisfy the specific needs of fund investors.

Explanation: A key objective of the Proposed Rule is to maintain U.S. financial stability and promote the safety and soundness of U.S. banking operations. In our view, an aggregate investment limit of 3 percent of a Banking Entity’s Tier 1 capital is consistent with the underlying purpose of the Proposed Rule and is imposed appropriately on foreign banking organizations with U.S. banking operations.

While we support limits on aggregate levels of investment in Covered Funds, we question the need for restrictions on investments by Banking Entities in individual Covered Funds. Seed money invested in such funds is typically at a very low level after an initial start-up period and imposing a strict 3 percent limitation makes it impossible for a Banking Entity to develop investment strategies that might require higher levels of investment in order to meet the specific needs of particular investors. From a risk standpoint, simply maintaining the overall 3 percent limit while permitting more flexibility for investments in specific Covered Funds would promote the safety and soundness of the Banking Entity.

In many situations, a Banking Entity might invest seed capital in a Covered Fund and then reduce its investment to zero or a *de minimis* level after an initial start-up period. However, under some circumstances, it may be appropriate for a Banking Entity to make a more significant investment that might appropriately be held for a longer period of time. For example, before promoting a fund structure to a broader group of investors, a Banking Entity might want to explore a new strategy with a more limited external distribution. An investment level exceeding 3 percent for a period longer than one year might enable a Banking Entity to explore a new investment strategy with a small sophisticated group of investors to determine whether the strategy is prudent and will deliver the expected returns.

For the sophisticated investors (primarily institutions) that would be interested in such new investment strategies, it is important for the Banking Entity to demonstrate that it is sufficiently confident in a new strategy to invest its own capital. The time horizon for investments by a Banking Entity in such a Covered Fund may vary depending on particular facts and circumstances. Permitting

a Banking Entity to launch a particular Covered Fund by making initial investments that exceed 3 percent of a Covered Fund's capital in collaboration with a few major external investors would promote innovation and prudent development of new concepts and strategies. Imposing an aggregate investment limit of 3 percent of a Banking Entity's Tier 1 Capital but allowing Banking Entity investments that exceed 3 percent in particular Covered Funds would avoid undue concerns about safety and soundness while encouraging prudent innovation.

Yours Sincerely,

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