February 13, 2012

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Board of Governors of the
Federal Reserve System
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Washington, DC 20551

Office of the Comptroller of the Currency
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Mr. Robert Feldman, Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
550 17th Street, NW
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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
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Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
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Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds: Docket No. R-1432 (Board); Docket No. OCC-2011-0014 (OCC); RIN 3064-AD85 (FDIC); File No. S7-41-11 (SEC); RIN 3038-AC[*] (CFTC)

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC") appreciates the opportunity to comment on the proposed rules issued by the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), Office of the Comptroller of the Currency ("OCC"), Federal Deposit Insurance Corporation ("FDIC"), Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") (collectively, the "Agencies") to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, better known as the Volcker Rule.[1]

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[1] 76 Federal Register 68846 (Nov. 7, 2011) (Board, OCC, FDIC and SEC); and CFTC, *Prohibitions Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Covered Funds*, available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister011112c.pdf (to be published in the Federal Register) (collectively, the "Proposed Rules"). Section 619 adds a new section 13 to the Bank Holding Company Act of 1956 (12 U.S.C. § 1851).

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PNC supports efforts to promote and enhance the safety and soundness of banking entities and to limit activities that pose undue risk to banking entities or to the financial system as a whole. While PNC supports these principles, we think it is important that the Agencies implement the Volcker Rule in a way that avoids the risk of serious unintended and undesirable consequences, including those that might inadvertently increase risk to banking entities, reduce the availability of liquidity or credit to consumers or businesses, or harm the nation's economic recovery and future growth opportunities. We urge the Agencies to consider carefully the potential adverse consequences from an overly expansive application of the Volcker Rule's statutory provisions, which were intended to protect against systemic risk and unduly risky behavior on the part of individual financial institutions, but not intended to unduly limit activities that are reasonable and appropriate and do not present that higher risk profile. In addition, we believe the Agencies should reexamine the Proposed Rules and, in particular, the compliance requirements of the Proposed Rules to ensure that the rules are appropriately tailored for, and do not impose unnecessary burdens on, banking organizations like PNC that traditionally have not engaged to any meaningful degree in the types of proprietary trading activities that the Volcker Rule was intended to prohibit, or held substantial investments in hedge funds or private equity funds that were intended to be prohibited under the Volcker Rule.

We highlight in this letter several aspects of the Proposed Rules of particular concern to PNC. We believe the changes described below would help avoid unintended consequences and provide for a more appropriate and tailored compliance regime for organizations, like ours, that were not the principal intended focus of the Volcker Rule. Importantly, we believe the Agencies have the discretion under the statute to address each of these concerns.

The recommendations in this letter are intended to supplement the comprehensive comments submitted by The Clearing House Association ("TCH"), the Securities Industry Financial Markets Association ("SIFMA"), the American Bankers Association ("ABA"), and the American Securitization Forum ("ASF"). We have indicated parenthetically the question numbers in the Proposed Rules addressed by each portion of this letter.

A. **The Proposed Rules Would Have a Negative Effect on Traditional Risk Management Practices and Customer Liquidity**

We are concerned that the standards included in the Proposed Rules, and the manner in which they may be implemented in practice by the Agencies, would prohibit, or cast substantial doubt on the continued permissibility of, legitimate customer-facing and risk management activities, such as market-making, hedging and other asset-liability management ("ALM") activities. Because the Proposed Rules fail to clearly protect such bona fide activities, banking organizations like ours will operate in a continuous zone of uncertainty–unclear whether legitimate activities and trades will on a post-hoc basis be determined by an Agency to constitute impermissible proprietary trading. This uncertainty and its consequent effects on the ability and willingness of banking organizations to provide liquidity to customers, or engage in *bona fide* hedging and ALM activities, could have important negative implications for safety and soundness and the functioning of the financial markets.

1. Hedging and risk management activities. (Q. 102-110)

Banking organizations necessarily take risk with virtually every financial transaction they conduct. Robust and effective risk management is critical to maintaining a strong and stable financial system. Undue constraints on this process in an effort to curtail the apparent risk represented by "proprietary trading" will either lead to more overall risk to the system or a reduction in the amount of risk banking organizations are willing to take in their ordinary business activities, including their lending and deposit-taking activities.

A critical way that banking entities manage and mitigate their risks is through principal activities. In adopting the Volcker Rule, Congress recognized the importance of this activity by including an exemption to the proprietary trading prohibition for all "risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings."[2] We support the Agencies' recognition that permissible hedging activities may be conducted on a dynamic, portfolio basis.[3] PNC, like many banks, manages a substantial amount of its risks on an unmatched, or dynamic, basis by trading in financial instruments on a continuous rolling basis rather than on a "matched book" approach. The study conducted by the Financial Stability Oversight Council on the Volcker Rule recognized the importance and prevalence of portfolio hedging by banking organizations.[4] We believe PNC has a long standing history of successfully managing its balance sheet risk and its customer contract risk through dynamic hedging, without undue risk or loss to PNC.

We are concerned, however, that other aspects of how the Agencies have proposed to implement the critically important exception for risk-mitigating hedging activities create significant doubt as to whether *bona fide* ALM and other hedging activities would be permissible. For example, while the Proposed Rules provide an exclusion for transactions conducted as part of liquidity risk management practices, no similar and clear exception is provided for other types of *bona fide* ALM activities. PNC, like other banking organizations, engages in *bona fide* ALM activities to manage a variety of its overall balance sheet risks. For example, we enter into foreign currency swaps to hedge the risks arising from PNC's business operations overseas and the risks of foreign exchange-related transactions with our customers. We provide mortgage servicing, and we try to hedge the risks associated with that business, including the mortgage servicing rights that we hold. Given the preponderance of financial assets and liabilities on our balance sheet, we face risks resulting from rising or falling market rates or narrowing or widening interest rate spreads, and we

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[2] 12 U.S.C. § 1851(d)(1)(C).

[3] See 76 Federal Register at 68875.

[4] See Financial Stability Oversight Council, *Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds*, at 30 (January 2011) ("FSOC Study") ("risk exposure is not synonymous with position or transaction: much of hedging is done on a portfolio basis.").

try to manage those risks, at least in part, through the financial instruments we acquire or sell in the market. The FSOC Study itself found that "ALM activities are clearly intended to be permitted activities."[5] For these reasons, we believe a clearer exception for normal and prudent ALM activities is necessary and we support the comments included in the joint comment letter submitted by TCH and the ABA Securities Association in this important area.

We also disagree with the notion reflected in the Federal Register notice that a proper risk-mitigating hedge may be viewed as impermissible proprietary trading if the hedge results in appreciable profits.[6] The statutory text of the exception for risk-mitigating hedges does not suggest that hedges are impermissible if they are profitable and, in fact, does not refer to profits at all. We agree that banking organizations should not be able to characterize transactions entered into primarily for speculative purposes as a risk-mitigating hedge. However, we believe preventing such abuses does not require casting doubt on *bona fide* hedging transactions solely because they might, over the duration of the hedge, generate profits. For example, a position in mortgage-backed securities may hedge, with a high degree of correlation, the market risk of a another balance sheet position while at the same time providing the banking organization an income stream from the mortgage-backed securities.

We believe the proper focus should be on (i) the purpose the banking entity entered into the transaction (i.e., whether it was entered into principally for hedging purposes, with any potential profits being an incidental outcome of such purpose, or was entered into principally for speculative purposes); and (ii) whether the hedge is correlated to the underlying risks being hedged (in other words, whether the hedge is *effective* in mitigating risk). If a banking entity is able to demonstrate that it entered into a hedge principally to mitigate risks and that the hedging transaction is reasonably or even highly correlated with the underlying risks, the fact that the organization managed to effectively hedge its risks in a manner that also provides incidental profits to the organization *promotes*—rather than jeopardizes—the safety and soundness of the entity.

2. Market-making activities. (Q. 80-85)

We see the issues related to the exemption for market-making activities (and for customer supportive trading generally) as being similar to those related to the exemption for hedging. When a banking organization trades in facilitation of customer needs, it is frequently the case that there is not a perfect match in terms of timing and terms between a bank's acquisition of a financial instrument from a customer (or other counterparty) and that bank's sale of the same instrument to another customer (or counterparty). As a result, it is frequently the case that banks may earn profits or incur losses on these trades. It is also frequently the case that banks are, at the moment they

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[5] FSOC Study at 47 ("All commercial banks, regardless of size, conduct [ALM] activities that help the institution manage to a desired interest rate risk and liquidity risk profile. This study recognizes that ALM activities are clearly intended to be permitted activities, and are an important risk mitigation tool. . . . A finding that these are impermissible under the Volcker Rule would adversely impact liquidity and interest rate risk management capabilities as well as exacerbating excess liquidity conditions. These activities also serve important safety and soundness objectives.").

[6] See 76 Federal Register at 68875.

make a trade, technically trading on their own behalf. Banks may acquire financial instruments from customers without having a buyer immediately lined up. They may also acquire financial instruments in anticipation of expected customer demand so that there is an inventory available to meet customer demands promptly and efficiently. As with the hedging activities described above, these types of customer supportive activities do not pose any significant intrinsic risk to a bank if properly managed.

We share the concerns of many about the adverse effect the Proposed Rules could have generally on liquidity in the marketplace and the ability of banking organizations to provide liquidity to customers, including holding inventory at levels sufficient to meet investor demand.[7] We are particularly concerned about the impact that this loss of liquidity would have on our ability to provide liquidity in the market for the debt securities of our middle-market and smaller customers. Because the issuances of these customers typically are smaller in size and less liquid than those of large corporations, banking organizations like ours often help provide liquidity in the market for the securities issued by these customers. However, because these issues are less liquid, and the trading volume of our market-making operations is significantly less than that of the largest banks, we are concerned that our *bona fide* market-making activities in these types of securities are more likely to be inappropriately characterized as impermissible proprietary trading under the standards in the proposal than market-making activities conducted in more liquid instruments or by firms with larger trading volumes.

Moreover, the standards in the Proposed Rules governing permissible market-making activities appear to have been developed primarily with liquid equity securities in mind, and could well impede *bona fide* market-making activities in debt securities more generally and the less-frequently-traded debt securities of small and middle-market entities in particular. As the joint comment letter submitted by SIFMA, TCH, the ABA, and the Financial Services Roundtable on the proprietary trading aspects of the Proposed Rules (the "Joint Trade Association Proprietary Trading Comment Letter") notes, when serving as a market maker for a customer in the U.S. corporate bond market, a banking organization often buys a bond from a customer with the knowledge that there may be little chance of rapidly reselling the bond and a high likelihood the organization will have to hold onto that bond for a significant period of time.

We urge the Agencies to revise the market-making provisions of the Proposed Rules to clearly accommodate the range and diversity of market-making activities conducted by banking

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[7] See, e.g., Statement of Alexander Marx, Head of Global Bond Trading, Fidelity Investments, Before the Subcommittees of the Committee on Financial Services on Financial Institutions and Consumer Credit and on Capital Markets and Government Sponsored Enterprises, at 6 (Jan. 18, 2012) (stating that the "proposal would restrict the ability of banks and their affiliates to hold an adequate inventory of securities"), available at http://financialservices.house.gov/UploadedFiles/HHRG-112-BA-WState-AMarx-20120118.pdf; Oliver Wyman, *The Volcker Rule: Considerations for implementation of proprietary trading regulations* (2011) (estimating that limits imposed by the Volcker Rule on the ability of banks to facilitate trading, hold inventory, and participate in the corporate bond market will result in as much as $43 billion a year in increased borrowing costs over time, as investors demand higher interest payments as a result of reduced liquidity in the market), available at http://www.sifma.org/issues/item.aspx?id=22888.

organizations on behalf of their customers, including small and middle-market customers. We support the recommendations included in the Joint Trade Association Proprietary Trading Comment Letter concerning the market-making aspects of the Proposed Rules.

B. Asset-Backed Commercial Paper Programs and Other Securitization Issues

Securitization trusts and asset-backed commercial paper ("ABCP") conduits are an important source of funding and liquidity to both banking organizations and a wide range of industrial and commercial businesses. In light of this, the Volcker Rule expressly provides that "[n]othing in [the Volcker Rule] shall be construed to limit or restrict the ability of a banking entity . . . to sell or securitize loans in a manner otherwise permitted by law" (the "Statutory Securitization Exemption").[8] We recognize that the Proposed Rules would permit a banking entity to have an investment in and sponsor a securitization vehicle the assets of which are limited to loans (as defined in the Proposed Rules) and certain derivatives.[9] Nevertheless, PNC is concerned that the Proposed Rules would in fact disrupt the flow of credit through the securitization process that Congress sought explicitly to protect through the Statutory Securitization Exemption.

1. Securitization Exemption Should be Expanded to Include ABCP Conduits. (Q. 296, 297, 298 and 301)

Of particular concern to PNC is the Proposed Rules' treatment of a securitization structure that is commonly known as an ABCP conduit. Banks typically organize and sponsor ABCP conduits in order to facilitate the extension of credit to their customers. An ABCP conduit issues commercial paper and the proceeds are then used to purchase customer loans, leases, receivables or other extensions of credit (collectively, "loans and receivables"), which also serve as the repayment source for the commercial paper. Subsequent issuances of commercial paper are used to repay the former issuances, and such refunding generally continues for the duration of the loans and receivables. If the ABCP cannot be rolled over, then the conduit draws on a liquidity facility that is maintained by the bank sponsor. In addition, most ABCP conduits are supported by letters of credit or other facilities established by their sponsors to absorb credit losses on the underlying assets in order to reduce the incidence of losses that investors would need to absorb.

PNC, like many other banks, administers an ABCP conduit. PNC's conduit is known as "Market Street Funding" ("Market Street"). Market Street has committed in excess of $29 billion to finance customer loans and receivables throughout its 17-year existence. In any given transaction, Market Street may either make a loan directly to a PNC customer, or purchase interests in a pool of the customer's loans or receivables. In some instances, the interests acquired in the customer's pool of loans or receivables may be considered an asset-backed security (e.g., the purchase of one class of undivided interests in a customer's pool of credit card receivables, with the other interests sold by the customer to other investors). Nevertheless, in all cases (i) PNC individually negotiates the terms of its purchase with our customer and these terms are incorporated

[8] 12 U.S.C. § 1851(g)(2).

[9] See Proposed Rules at §__.14(a)(v).

into the purchase documents entered into bilaterally by PNC and its customer (much like a loan, as opposed to the purchase of ABS in the open market); and (ii) the interests are backed directly or indirectly by the customer's loans or receivables.

We believe the Proposed Rules should be modified to make clear that, pursuant to the Statutory Securitization Exemption, banking entities may sponsor, control and invest in an ABCP conduit that facilitates the securitization of customer loans and receivables. In addition, we believe the intermediate special purpose entities used by a customer to issue interests to an ABCP conduit should be considered part of a single, permissible securitization structure with the conduit itself.[10] These modifications are both appropriate and necessary to give proper effect to the Statutory Securitization Exemption and its purpose that nothing in the Volcker Rule limit or restrict the securitization of loans. Doing so will also ensure that ABCP conduits can continue to serve as an important source of financing for the credit transactions entered into by commercial and financial entities to finance the purchase of their own products.

2. Securitization Entities that a Banking Entity is Permitted to Own or Sponsor Should Not be Subject to the "Super 23A" Restrictions. (Q. 296, 297, 298, 314)

Subsection (f)(1) of the Volcker Rule[11] prohibits a banking entity and any of its affiliates from entering into any "covered transaction" (as defined in Section 23A of the Federal Reserve Act) with a "hedge fund" or "private equity fund" that the banking entity sponsors or for which it serves as investment manager or investment adviser. Subsection (f)(2) of the Volcker Rule also makes the provisions of Section 23B of the Federal Reserve Act applicable to transactions between a banking entity (and its affiliates) with a sponsored or managed "hedge fund" or "private equity fund" as if the bank (or affiliate) were a "member bank" and the fund were its "affiliate." These restrictions are collectively referred to as "Super 23A."[12]

The Proposed Rules would subject a securitization vehicle that falls within the scope of the Statutory Securitization Exemption, such as an ABCP conduit, to the Super 23A restrictions. However, the Statutory Securitization Exemption provides that nothing in the Volcker Rule—including the Super 23A restrictions in subsection (f)—shall limit the loan securitization activities of a banking entity. This view was supported by the FSOC study, which stated:

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[10] We note that the Agencies' previously have recognized that the issuance of interests by a customer's special purpose vehicle to an ABCP conduit should not itself be considered a "securitization transaction," but rather should be viewed as an integrated securitization transaction with the purchasing ABCP conduit. See *Credit Risk Retention*, 76 Federal Register 24090, 24107-09 (April 29, 2011) (treating an eligible ABCP conduit and its associated customer special purpose vehicles as a single securitization transaction for purposes of the proposed risk retention rules).

[11] 12 U.S.C. § 1851(f)(1).

[12] Although Super 23A incorporates the definition of "covered transactions" from Section 23A of the Federal Reserve Act, Super 23A (unlike Section 23A itself) prohibits banks and their affiliates from engaging in any covered transactions with a "hedge fund" or "private equity fund" that they sponsor, manage, or advise and does not permit banks to engage in any covered transactions with such a fund (even if limited in size relative to the banking entity's capital and surplus).

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> "The creation and securitization of loans is a basic and critical mechanism for capital formation and distribution of risk in the banking system. While these activities involve the assumption of principal risk, the broader benefits to the economy reflect the intent of federal borrowing subsidies and protections. Accordingly, Congress determined that *none of the restrictions of the Volcker Rule,* nor the "backstop" restrictions on permitted activities, will apply to the sale or securitization of loans."[13]

For these reasons, PNC believes that the Agencies' final rules should exclude all securitization vehicles that fall within the scope of the Statutory Securitization Exemption—including ABCP conduits—from the Super 23A restrictions. Doing so is necessary to avoid significant disruptions to a wide range of securitization entities and the financing and liquidity they provide.

For example, banks, such as PNC, that sponsor multi-seller ABCP conduits typically provide liquidity and credit support to the commercial paper issued by the conduit. Liquidity is provided with a lending or asset purchase facility that is entered into by the bank and the conduit entity. Credit support is often provided through a letter of credit that is issued by the bank in an amount that is deemed sufficient to support the debt ratings on the commercial paper. Because the commercial paper is not match-funded to the conduit's loans and receivables, and investors are understandably unwilling to take unlimited credit risk, ABCP conduit structures would not be viable without these credit and liquidity support facilities. Thus, applying Super 23A to transactions between a bank (and its affiliates) and its sponsored ABCP conduit would effectively prohibit banking organizations that sponsor and manage a conduit from providing these facilities to the conduit, with a substantial adverse impact to the very important ABCP market and loan securitization volumes. We believe this is precisely the type of adverse consequences that Congress sought to avoid by inclusion of the Statutory Securitization Exemption.[14]

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[13] FSOC Study at 47 (emphasis added).

[14] Even if the Agencies were to conclude (wrongly in our view) that the Statutory Securitization Exemption does not provide an exemption from Super 23A, ABCP conduits and other traditional securitization vehicles do <u>not</u> have the characteristics of a "hedge fund" or "private equity fund." For the reasons discussed fully in the joint comment letter submitted by SIFMA, TCH, the ABA, and the Financial Services Roundtable on the covered fund portions of the Proposed Rules (the "Joint Trade Association Covered Fund Comment Letter"), the Agencies have the authority to determine, by rule, that an entity should not be considered a "hedge fund" or a "private equity fund" for purposes of the Volcker Rule even if the fund must rely on the exceptions in sections 3(c)(1) or 3(c)(7) of the Investment Company Act. If necessary, we believe the Agencies should use this authority to exclude securitization vehicles, including ABCP conduits, from the definition of a "hedge fund" or "private equity fund."

3. Agencies Should Clarify that Servicers of Securitized Assets Are not "Sponsors." (Q. 219, 220)

Banking entities participate in securitization transactions in a variety of capacities, including many that do not involve any of the principal risks that the Volcker Rule was intended to prohibit. One such role is that of acting in the capacity of a servicer of assets that underlie a securitization. PNC Bank, National Association ("PNC Bank") acts as a servicer for both commercial and residential mortgage assets.

The Midland Loan Services division of PNC Bank is a leading third-part provider of loan servicing for the commercial real estate finance industry. Midland is one of the largest commercial loan servicers in the United States, currently servicing a portfolio of approximately 29,000 loans with a total principal balance of approximately $133 billion of loans that are housed in securitization entities that issue commercial mortgage-backed securities ("CMBS"). PNC Mortgage, also a division of PNC Bank, acts as a servicer of residential, mortgage loans--predominantly first-lien residential mortgage loans collateralized by one-to-four family residential real estate. PNC Mortgage currently services approximately $85 billion of residential mortgages that were securitized through the Government National Mortgage Association, Fannie Mae or Freddie Mac.

The duties and obligations of a bank that services residential or commercial mortgage loans that serve as collateral for a securitization entity are very different from those of a hedge fund or private equity fund manager. A hedge fund or private equity fund manager has duties and obligations that involve the making of investment decisions on behalf of investors. By contrast, a servicer of assets does not select the assets or make investment decisions with respect to the assets underlying the securitization. Therefore, we believe the Agencies should make clear in the final rules that a banking entity will not be deemed a "sponsor" of, or to otherwise control, a securitization vehicle solely by acting as a servicer of the assets held by the vehicle.

C. Modifications are Necessary to Avoid Unintended Negative Effects on the Regulatory Capital of Banking Organizations that issue REIT Preferred Securities (Q. 217, 221, 225)

PNC is concerned that the Proposed Rules, as drafted, would disrupt the issuance and maintenance by banking organizations of REIT preferred securities that qualify as regulatory capital ("REIT Preferred Securities") and, thus, support the safety and soundness of banking organizations.

1. Background on Regulatory Capital Treatment of REIT Preferred Securities.

The minority interests resulting from the issuance of REIT Preferred Securities qualify as Tier 1 regulatory capital of the issuing bank and its parent bank holding company ("BHC") under the risk-based capital guidelines of the Office of the Comptroller of the Currency and the Federal Reserve.[15] Furthermore, under the Basel III framework established by the Basel Committee on

[15] Office of the Comptroller of the Currency, Corporate Decision 97-109 (Dec. 1997); Comptroller's Licensing Manual Capital and Dividends, p. 13 (Nov. 2007); Federal Reserve, Supplementary Materials

Banking Supervision ("Basel Committee"), minority interests in consolidated subsidiaries, such as the minority interest associated with REIT Preferred Securities, would continue to be eligible for inclusion in the Tier 1 capital of the parent bank and its BHC subject to certain limitations.[16] The inclusion of the minority interests in consolidated subsidiaries resulting from the issuance of REIT Preferred Securities in Tier 1 capital recognizes the fact that the securities provide significant loss absorption to banking organization issuers. Moreover, REIT Preferred Securities can represent a meaningful amount of the Tier 1 capital of the issuing banking organization.

2. Structures Used to Issue REIT Preferred Securities.

Some banking organizations issue REIT Preferred Securities to the public directly from a subsidiary that qualifies for the exceptions in Section 3(c)(5) or Section 3(c)(6) of the Investment Company Act (the "Section 3(c)(5) Exemption" and the "Section 3(c)(6) Exemption," respectively). Under the Proposed Rule, these subsidiaries would not be considered a "covered fund" because they may rely on an exception from the definition of an investment company other than the exceptions in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act (the "Section 3(c)(1) Exemption" and the "Section 3(c)(7) Exemption," respectively).

However, some banking organizations, like PNC, use a passive, pass-through statutory trust (a "Pass-Through Trust") to issue REIT Preferred Securities to the public. In this type of structure, the Pass-Through Trust holds all of the preferred securities issued by the banking organization's REIT subsidiary that is formed as a limited liability company and that relies on the exceptions in Section 3(c)(5) or 3(c)(6) Exemptions (a "REIT Entity"). The activities of the Pass-Through Trust generally are limited to (i) issuing the REIT Preferred Securities; (ii) holding the preferred securities of the REIT Entity that relies on the Section 3(c)(5) or 3(c)(6) Exemption; (iii) passing though dividends paid by the REIT Entity whose securities the trust holds; and (iv) performing administrative and ministerial functions necessary to facilitate this pass through.

The use of a Pass-Through Trust (rather than the REIT Entity itself) to issue the REIT Preferred Securities to investors helps improve the marketability of the REIT Preferred Securities by eliminating undesirable tax consequences for foreign investors. Importantly, this structure does not alter the loss absorption benefits of the REIT Preferred Securities, nor does it disqualify the minority interest arising from the issuance of REIT Preferred Securities from inclusion in the organization's Tier 1 capital.

Accompanying Final Rule on Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital, 70 Federal Register 11827, 11828 (Mar. 10, 2005).

[16] Basel Committee on Banking Supervision and Regulation, Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems (Dec. 2010). The regulatory capital treatment of REIT-preferred securities is not affected by the so-called "Collins Amendment" to the Dodd-Frank Act, which provides for the phase-out of trust preferred securities. 12 U.S.C. § 5371.

3. Pass-Through Trusts Should Not be Considered Hedge Funds or Private Equity Funds.

Because the only assets the Pass-Through Trusts hold are the preferred securities of the REIT Entity, the Pass-Through Trusts may not themselves rely on the Section 3(c)(5) or 3(c)(6) Exemptions and, thus, typically rely on the Section 3(c)(7) Exemption. Accordingly, a Pass-Through Trust would be a "covered fund" under the Proposed Rules, notwithstanding the fact that it does not implicate the concerns underlying the Volcker Rule, is used to improve the Tier 1 regulatory capital of the relevant banking organization, and merely acts as a passive, pass-through entity for a REIT Entity that itself would not be considered a "covered fund" under the Proposed Rules.

Accordingly, absent modifications to the Proposed Rules, banking organizations that have issued REIT Preferred Securities using this type of structure would likely be required to either attempt to (i) repurchase the REIT Preferred Securities, or (ii) divest the underlying REIT Entity in the face of covenants against taking such an action.[17] Moreover, each of these alternatives would result in an immediate reduction in regulatory capital, as well as additional expense and burden.

Such an outcome would be contrary to the Congressional intent of the Volcker Rule. Legislative history indicates that Congress intended the Agencies to implement the private fund restrictions of the Volcker Rule in a way that did not disrupt entities—like the Pass-Through Trusts—that do not have the characteristics of a hedge fund or a private equity fund.[18] Specifically, these trusts:

- exist only to provide regulatory capital and loss absorption capacity for the parent banking organization;
- have no investment gain or loss objective other than to provide income for their investors that depends primarily on cash flows from the assets held by the REIT Entities, all of which are assets that the parent banking organization could otherwise have held;
- do not engage in activities that pose material risks to the bank or its BHC;
- are not designed to be a source of profit for the banking organization; and
- are not in practice actively managed.

Therefore, PNC respectfully requests that the Agencies define the terms "hedge fund" and "private equity fund" in a manner that excludes a passive, pass-though trust that must rely on the

[17] In this regard, it does not appear that the Pass-Through Trusts would qualify for any of the other proposed carve-outs in the Proposed Rules from the prohibition on investments by banking entities in covered funds.

[18] See 156 Cong. Rec. H5226 (daily ed. June 30, 2010) (colloquy between Chairman Frank and Rep. Himes).

3(c)(7) Exemption but the activities of which are limited to: (i) issuing REIT Preferred Securities that qualify as regulatory capital under the capital rules of the relevant Federal banking agency; (ii) holding the preferred securities of a REIT Entity exempt from the definition of an investment company under the Section 3(c)(5) or 3(c)(6) Exemptions (as such exemptions are applied for purposes of the Volcker Rule as discussed below); (iii) passing through dividends paid by the REIT Entity whose securities it holds; and (iv) performing administrative and ministerial functions necessary to facilitate this pass through. PNC also urges the Agencies to craft this exemption not simply to "grandfather" existing investments in such entities, but also to preserve adequate flexibility to ensure that banking organizations may make similar investments in entities designed to support the issuance of REIT Preferred Securities or other regulatory capital instruments in the future.

For the reasons discussed fully in the Joint Trade Association Covered Fund Comment Letter, we believe that the Agencies have the ability to define those entities that rely on the Section 3(c)(1) or 3(c)(7) Exemption that should be treated as "hedge funds" and "private equity funds" for purposes of the Volcker Rule. We believe excluding Pass-Through Trusts from the definition of "hedge fund" and "private equity fund" is particularly appropriate for the reasons discussed above. Other factors also support this approach. For example, if the Pass-Through Trusts held debt securities, even if deeply subordinated, rather than the preferred equity securities of the REIT Entity (which, despite being equity, are fixed-income instruments that have many of the characteristics of debt), the trusts would be eligible for the exemption under Rule 3a-7 under the Investment Company Act. Similarly, the functions of a Pass-Through Trust as a 100 percent common equity owned subsidiary of a banking organization are comparable to those of entities that are eligible for the "finance subsidiary" exemption under Rule 3a-5 of the Investment Company Act, even though the trust does not meet certain requirements of this rule.

In addition, failure to exempt the Pass-Through Trusts from the definition of a "hedge fund" or "private equity fund" would lead to illogical results due to the Super 23A restrictions that apply to covered funds. Specifically, the Super 23A restrictions in the Proposed Rules would render impermissible a critical feature of the REIT Preferred Securities issued by the Pass-Through Trusts that is fundamental to their regulatory capital treatment and their loss absorption features. Most REIT Preferred Securities contain a conditional exchange provision that enables the primary federal regulator of the issuing banking organization to direct that the REIT Preferred Securities be automatically exchanged for preferred shares of the bank or its parent BHC upon the occurrence of a conditional exchange event.[19] Such an exchange, however, would be prohibited under the Proposed Rules because the banking organization, as a sponsor of the Pass-Through Trust issuing the REIT Preferred Securities, may <u>not</u> purchase or invest in securities issued by the trust because it

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[19] A "Conditional Exchange Event" generally is deemed to occur when: (i) the issuing banking organization becomes "undercapitalized" under the "prompt corrective action" regulations of its primary federal regulator; (ii) the issuing banking organization is placed into conservatorship or receivership; or (iii) the primary federal regulator of the issuing banking organization, in its sole discretion, anticipates taking a supervisory action that limits the payment of dividends by the issuing banking organization or the issuing banking organization becoming "undercapitalized" in the near term and accordingly directs such an exchange.

would be considered a covered fund. Moreover, if the relevant banking organization is required to acquire the REIT Preferred Securities issued by the trust due to a Conditional Exchange Event, the organization typically also will acquire the preferred securities of the REIT Entity held by the Pass-Through Trust (and which backed payments on the REIT Preferred Securities). However, this transaction would constitute a purchase of assets from the Pass-Through Trust and likewise would be prohibited under the Proposed Rules due to the Super 23A restrictions applicable to covered funds. We believe the application of the Super 23A restrictions in the Volcker Rule to the Pass-Through Trusts runs counter to the policy considerations underlying the statutory language by potentially rendering the Conditional Exchange Feature impermissible and, as a result, impeding the loss absorption of the REIT Preferred Securities, which is crucial to their continued eligibility for inclusion in a banking organization's Tier 1 regulatory capital.

4. Clarification of Test for Compliance with the 3(c)(5) Exemption and the 3(c)(6) Exemption for Bank-Affiliated REITs.

PNC also believes that the Agencies should clarify that a bank-affiliated REIT Entity that supports the issuance of REIT Preferred Securities will not be considered a "covered fund" for purposes of the Volcker Rule as long as the REIT qualified for the Section 3(c)(5) or 3(c)(6) Exemption at the time the REIT Preferred Securities were issued. To qualify for the Section 3(c)(5) and 3(c)(6) Exemptions, an issuer must satisfy specific asset composition and income tests administered by the SEC. These tests, however, are not relevant to REIT status under the federal income tax code, nor is the regulatory capital treatment of REIT Preferred Securities contingent upon REIT Entities meeting these requirements.

We are concerned that the SEC-administered asset and income tests for determining whether an entity is primarily engaged in "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate," and thus eligible for the Section 3(c)(5) and 3(c)(6) Exemptions, may change over time and, importantly, may change after a banking organization has already issued REIT Preferred Securities for regulatory capital purposes. For example, the SEC issued a concept release and request for comment on August 31, 2011, that indicated it is contemplating issuing additional guidance that would alter how the test to determine compliance with the Section 3(c)(5) Exemption will be conducted. Such changes could result in certain REIT Entities losing their ability to rely on the Section 3(c)(5) or 3(c)(6) Exemption, which could result in such REIT Entities becoming "covered funds" subject to the Volcker Rule's prohibition on investment. Such a change in the status of a REIT Entity after the issuance of REIT Preferred Securities could have unintended consequences for the regulatory capital of the issuing banking organizations.

Like the Pass-Through Trusts discussed above, REIT Entities do not have the characteristics of hedge funds or private equity funds. Accordingly, PNC respectfully requests that the Agencies confirm that REIT Entities would qualify for an exclusion from the definition of "covered fund" in the final rule so long as they met the qualifications for the Section 3(c)(5) or 3(c)(6) Exemption when the REIT Preferred Securities were issued.

D. **Changes to the Standards Governing the Extended Transition Period for Illiquid Funds Are Necessary to Give Effect to Congressional Intent** (Q. 347)

The Volcker Rule expressly includes an extended 5-year transition period (in addition to the standard conformance period of 2 years with the potential for 3 one-year extensions) for banking entities to divest or otherwise conform their existing investments in "illiquid funds."[20] As both Senator Merkely and the Federal Reserve Board have recognized, the purpose of this extended transition or "wind-down" period for investments in an illiquid fund is to minimize disruption of existing investments in illiquid funds and permit banking entities to fulfill existing obligations to illiquid funds while still steadily moving banking entities toward conformance with the prohibitions and restrictions of the Volcker Rule.[21]

However, the Proposed Rules implementing this extended transition period for illiquid funds essentially negate the availability of this transition period for virtually all of the pre-existing, legacy private equity and venture capital fund investments of banking organizations. Thus, the Proposed Rules will have precisely the effect that the extended transition period was intended to prevent—the forced liquidation at "fire sale" prices of legally acquired, pre-existing private equity and venture capital fund investments. This result is not only inconsistent with the purposes of the extended transition period, but also is inconsistent with the goals of the Volcker Rule itself to foster the safety and soundness of banking organizations and reduce potential conflicts of interest between banking entities and their customers. In addition, because the legacy investments of a banking entity must be sold to an entity that does not control an insured depository institution, the proposed rules likely would result in significant forced value transfers from the regulated banking industry to the shadow banking system.

1. Background on Legacy Fund Investments and Expected Run-Off.

For many years prior to the Dodd-Frank Act, PNC, like other banking organizations, has legally provided equity financing to private funds that themselves provide capital, in the form of equity or mezzanine debt, to middle-market and other companies that lack access to the public markets.[22] Many of these "legacy" fund investments are in funds that already have drawn down all or substantially all of their committed capital and remain in existence solely to sell off the funds' last remaining assets in an orderly fashion. In this regard, legacy funds typically have a term of 10 to 12 years, although this often can be extended for a few additional years in times of economic stress so that investments can be sold at a fair price.[23] Thus, the standard conformance period available under the Volcker Rule (2 years, with the potential for 3 one-year extensions) is not long enough to allow many of these legacy investments to run off in an orderly fashion.

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[20] See 12 U.S.C. § 1851(c)(3)(A).

[21] See 156 Cong. Rec. S5899 (daily ed. July 15, 2010) (statement of Sen. Merkley); 76 Federal Register 8265, 8267 (Feb. 14, 2011).

[22] These investments were legally made under a variety of authorities, including section 4(c)(6) and section 4(k)(4)(H) of the Bank Holding Company Act.

[23] See, e.g., 12 C.F.R. 225.173(a) (permitting a "private equity fund" to have a term of up to 15 years).

PNC recognizes that, in light of the Volcker Rule, it will have to cease making investments in new, impermissible funds after the statute's effective date and must work diligently to "wind-down" its legacy fund investments that are not permissible under the statute and the Agencies' rules. We have already taken significant steps towards these ends. For example, since the enactment of the Volcker Rule, PNC has ceased making new investments in funds that we believe are likely to be prohibited by the Agencies' final rules. In addition, we have shrunk our portfolio of legacy investments in third-party managed private equity funds approximately 22 percent in terms of funded commitments, and 50 percent in terms of unfunded commitments, from 1Q 2008 to 3Q 2011. Importantly, we estimate that approximately 85 percent of our legacy investments in third-party managed private equity funds would run off in the ordinary course (and without forced fire sales) by 2019, and our unfunded commitments at the end of this period would be de minimis. Our remaining legacy investments, moreover, are predominantly in private funds that provide mezzanine and equity financing to small and middle-market companies--not in hedge funds that pursue speculative profits through short-term trading.

2. Rules Should Provide Banking Organizations Both the Time and Certainty Necessary to Wind-Down Legacy Investments in an Orderly Fashion.

We believe it is very important that the rules implementing the Volcker Rule provide banking organizations the ability to conduct an orderly wind-down of their existing "legacy" investments in covered funds without forced "fire sales." In recent years, discounts to net asset value experienced by ordinary course sellers of private fund interests in the secondary markets have been typically in the 15 percent to 30 percent range. Accordingly, discounts to net asset value resulting from Volcker Rule-induced fire sales could well exceed 50 percent, resulting in substantial losses to banking organizations on legally made, pre-existing investments and lower valuations for other investors in these funds. Forced sales will also inevitably disrupt the availability of financing for middle-market companies, particularly in the junior part of the capital structure, where financing is already tenuous. In particular, forced liquidations of existing investments will result in an increase of the cost of new equity financings for companies that traditionally rely on venture capital or private equity funds for equity capital. This is because as the price of existing investments decline, and their risk-adjusted returns increase, the risk-adjusted returns on new financings also will rise to be able to compete for funding from capital sources.[24]

Moreover, requiring the divestiture of legacy investments will not substantially relieve banking organizations from existing risk because the majority of capital commitments have already been drawn. The risks associated with holding investments in legacy funds through their orderly wind down pales in comparison to the losses (including foregone opportunity costs) that banking entities will almost certainly suffer if forced to exit early via a "fire sale."

Accordingly, we strongly believe the Proposed Rules should be modified to allow banking organizations sufficient time to divest their legacy fund investments in an orderly manner. One way

[24] See S. Hanson, A. Kashyap and J. Stein, "A Macroprudential Approach to Regulation," 25 Journal of Economic Perspectives at 5-6 (2011).

to achieve this important objective would be for the Agencies to grant an exemption under subsection (d)(1)(J) of the Volcker Rule providing banking organizations until July 21, 2019 to divest any investment in any illiquid covered fund that the banking organization legally held as of the date of enactment of the Dodd-Frank Act. For the reasons discussed above, we believe that such an exemption would clearly "promote and protect the safety and soundness of the banking entity and the financial stability of the United States."[25]

At a minimum, we believe the definition of an "illiquid fund" should be modified so that the extended five-year transition period provided in the statute for illiquid funds can achieve its intended purpose. As noted previously, the proposed definition of an "illiquid fund" eliminates for all practical purposes the availability of the statute's 5-year extended transition period even for funds that are predominately invested in illiquid assets. Specifically, the Proposed Rules provide that, if a banking entity has the right to sell or redeem its interests in an illiquid fund with the consent of the general partner, the banking entity may not take advantage of the extended transition period unless (i) the banking entity uses all reasonable efforts to obtain the general partner's consent, and (ii) the general partner has denied the request.[26] However, virtually all LP fund agreements permit a banking entity investor to sell its interests with the consent of the general partner, or request a redemption (subject to general partner approval), if continued ownership of the interest in the fund would violate a legal requirement applicable to the investor.

We appreciate that the Federal Reserve Board has indicated that, when acting on requests by a banking entity to avail itself of the extended transition period with respect to an illiquid fund, the Board will consider whether the banking entity has used its reasonable best efforts to obtain the general partner's consent and whether the general partner has sought to impose unreasonable demands on its grant of consent.[27] However, such consideration is unlikely to make the extended transition period a practical opportunity for banking entities for several reasons.

First, because the reasonable steps taken by a banking entity, and the potentially unreasonable positions of a general partner, are at best only two of many factors that the Board may consider as part of an extension request, a banking entity will have no certainty whether taking reasonable actions to exit its legacy investments, or the unreasonable demands of a general partner or other third party to allow such an exit, will actually qualify a legacy illiquid fund investment for the extended transition period.[28] This uncertainty is particularly problematic given the substantial lead time that many banking entities will need to explore potential sale or redemption opportunities for hundreds, if not thousands, of legacy illiquid fund investments in light of the specific terms of the governing agreements and the potential market for such (by definition) illiquid funds.

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[25] 12 U.S.C. § 1851(d)(1)(J).

[26] See proposed 12 C.F.R. § 248.31(b)(3)(iii)(B).

[27] 76 Federal Register 8265, 8272 (Feb. 14, 2011).

[28] See proposed 12 C.F.R. § 248.31(d) (listing numerous factors that the Board may consider in connection with an extension request).

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Second, the proposal nowhere indicates that an unreasonable condition includes the offering of only a substantially discounted "fire sale" price for the legacy investment. Thus, for example, under the proposal it would appear that if the general partner or a third party offered, on the day before the end of a banking entity's general conformance period, to buy the banking entity's investment in a legacy investment for 10 percent of its net asset value, the banking entity would be forced to take the offer or be in violation of the Volcker Rule.[29] Third, under the Proposed Rules, it would appear that a banking entity could not take advantage of the extended transition period for an illiquid fund if, after seeking the consent of the general partner to sell or redeem its interest, the general partner simply does not respond to the banking entity's request, or does not respond before the general conformance period expires.

The lack of certainty created by the Proposed Rules concerning the availability of the 5-year extended transition period, combined with the substantial leverage the Proposed Rules provide a "vulture" investor to force a banking entity to accept a "fire sale" price for an illiquid fund (or be in violation of the Volcker Rule), will in our view force banking entities to divest their legacy investments in illiquid funds in a rapid manner before the end of the general conformance period. In order to give practical effect to the statute's extended transition period for legacy investments in illiquid funds, we believe the Federal Reserve Board, at a minimum, should establish a presumption that a banking entity will be deemed to be "contractually committed" to remain invested in a legacy illiquid fund if—

1. The banking entity has used its reasonable best efforts to exit its ownership interest in the fund, including requesting the consent of the general partner of the fund (where such consent is required) to transfer the banking entity's interest in the fund to another person and/or to withdraw from the fund; and
2. An unaffiliated general partner of the fund has—
   - Withheld its consent to a transfer by the banking entity of its ownership interest in the illiquid fund and/or withdrawal from the fund; or
   - Consented to a transfer or redemption of the banking entity's ownership interest in the illiquid fund only on conditions that--
     - Would cause the sale or transfer to not constitute an effective divestiture of the banking entity's ownership interest;
     - Would require the banking entity to remain liable for any unfunded commitment if the purchaser of the banking entity's interest fails to meet such commitment; or
     - Would require the banking entity to indemnify the fund for any breach of a representation or warranty provided by the purchaser of the banking entity's interest; or
3. The sale or redemption of the banking entity's ownership interest would violate a fiduciary duty owed by the banking entity to one or more unaffiliated persons; or

[29] This is because under the Proposed Rules a banking entity is required to immediately divest any interest in an illiquid fund during the extended transition period the moment the entity's "contractual obligation" to remain invested in the fund terminates.

4. A person eligible to acquire the banking entity's ownership interest in the illiquid fund under the terms of the fund's governing documents cannot be located or offers to purchase the interest only at a "fire sale" price that is substantially below the net asset value of the interest.

We would be pleased to work with the Board or its staff to develop appropriate standards for determining whether an offer is "substantially below" net asset value. Furthermore, because investments in illiquid funds generally cannot be immediately sold or redeemed, even if appropriate consents are received, we believe the time frame for determining whether the conditions specified in items 2, 3 and 4 above exist should be the date that is 6 months prior to the end of the general conformance period (including any applicable extensions).

E. Trading in Derivatives on U.S. Government and Agency Obligations (Q. 121)

The Agencies have asked whether the exception in the statute permitting banking entities to trade in obligations issued by the United States or its agencies, or issued or guaranteed by certain government agencies or government-sponsored entities (including the Government National Mortgage Association, Fannie Mae and Freddie Mac) should extend to trading in options or other derivatives based on U.S. government obligations described in the exemption.[30] We believe that the permitted activity regarding government obligations should be expanded to include derivatives on those instruments.

PNC and other banking organizations trade derivatives on government obligations as part of trading activities in the underlying obligation. For example, we may trade Treasury futures as part of our trading of Treasuries. Limiting the permitted activity to only the underlying cash instruments could restrict the activity explicitly permitted by Congress and reduce liquidity in the markets that Congress sought to protect through the inclusion of the exception in subsection (d)(1)(A) of the Volcker Rule. We believe it is fully consistent with the statutory exemption for trading in government obligations to also permit trading in derivatives based on such obligations.

F. Trading in Municipal Securities (Q. 120, 124)

Municipal securities provide vital funding to State and local governments and their agencies and instrumentalities. Municipal securities also are a critical source of funding for a wide range of State and local government-sponsored projects, such as infrastructure development, affordable housing projects, university construction, and health care facilities.

Through their ongoing business and community development activities, banking organizations develop a close understanding of the State and local governments, agencies, and instrumentalities that issue municipal securities, as well as the healthcare, educational, infrastructure and other borrowers that issue debt through State and local agencies to provide critical services to their communities. As a result, banking organizations are an important source of funding for governments, government agencies and government-supported projects and are a vital

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[30] 12 U.S.C. § 1851(d)(1)(A); 76 Federal Register at 68878, Q. 121.

source of liquidity to issuers of, and investors in, tax-exempt municipal securities. For example, banks provide a wide range of funding solutions to the issuers of tax-exempt municipal securities, including direct loans and credit facilities and underwriting and remarketing services for bond transactions. In addition, bank trading desks play a key role in providing liquidity to the over-the-counter market for tax-exempt municipal securities. The underwriting, distribution, remarketing, and trading services provided by banks allow the full universe of tax-exempt municipal borrowers to obtain funding in an efficient and cost-effective manner. The role of banks in supporting these issuers and markets is particularly important given the extremely diverse and wide range of issuers of tax-exempt municipal debt and the low trading volume in many issues. The Municipal Securities Rulemaking Board ("MSRB") has estimated that there are more than 50,000 separate issuers of municipal securities in the United States, less than 1 percent of municipal securities trade on any given, and fewer than 10 percent trade in a given month.[31]

However, the Proposed Rules, as drafted, would permit a banking entity to trade only in "obligation[s] of any State or political subdivision thereof."[32] Thus, the Proposed Rules would not appear to allow banking entities to trade in the wide range of tax-exempt municipal securities that are issued by or through State or local government agencies or instrumentalities. For example, in PNC's home state of Pennsylvania, private and public universities are able to issue tax-exempt municipal debt to finance their facilities through the Pennsylvania Higher Educational Facilities Authority ("PHEFA"), an authority of the Commonwealth of Pennsylvania. Likewise, health care facilities like the University of Pittsburgh Medical Center may issue tax-exempt municipal debt through the Allegheny Hospital Development Authority ("AHDA"), an authority of Allegheny County. The municipal tax-exempt debt issued under the auspices of the PHEFA and the AHDA, however, would not qualify for the exception in the Proposed Rules because the securities are not direct obligations of the Commonwealth of Pennsylvania or Allegheny County, respectively.

We believe the exception in subsection (d)(1)(A) of the Volcker Rule (12 U.S.C. § 1851(d)(1)(A)) was intended to encompass the wide range of tax-exempt securities that are issued by or through State or local governments, agencies and instrumentalities. Otherwise, the Volcker Rule would limit an important source of liquidity for thousands of issuers of tax-exempt municipal debt—an outcome that Congress likely did not intend. Reduced liquidity would raise the financing costs for these issuers and, ultimately, increase the cost and reduce the availability of a wide range of government or government-supported services. Reduced liquidity would also have the unintended consequence of lowering the value of outstanding municipal securities that did not qualify for the unduly narrow exception in the Proposed Rules.

Accordingly, PNC is concerned that the Proposed Rules could have a detrimental effect on the market for municipal securities and the ability of State and local governments, agencies and instrumentalities, as well as the numerous issuers that participate in programs sponsored by such entities, to obtain essential financing at reasonable costs. This, in turn, could have a meaningful

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[31] See Letter from Alan D. Polsky, Chair, MSRB, to the Agencies dated Jan. 31, 2012 ("MSRB Comment Letter"), at p. 2-3.

[32] Proposed Rules at §__.6(a)(1)(iii) and (2).

negative impact on the cost and availability of critical government or government-supported services, including healthcare, affordable housing, schools, universities and public infrastructure (such as roads and sewers).

For these reasons, we believe that the Agencies can and should modify the Proposed Rules to allow banking entities to trade in any security that qualifies as a "municipal security" under the Securities Exchange Act of 1934.[33] We note that the MSRB has made a similar recommendation.[34] This would allow banks to continue to provide liquidity for securities that are (i) direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or (ii) tax-exempt industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code). Importantly, trading in such securities does not pose any special safety and soundness risks to banking organizations—a fact recognized by Congress in 1999 when it authorized well capitalized national banks to underwrite and deal in, without limit, general obligation, limited obligation and revenue bonds issued by or on behalf of any State, or any public agency or authority of any State or political subdivision of a State.[35]

G. Sponsoring and Investing in Public Welfare Funds and Funds that Provide Financing to Small or Middle Market Businesses (Q. 276, 278)

Section__.13(a) of the Proposed Rules permits banking entities to invest in and sponsor (i) small business investment companies ("SBICs"), (ii) funds that are designed to promote the public welfare (as that term is interpreted under 12 U.S.C. § 24(Eleventh)), including Low-Income Housing Tax Credit ("LIHTC") and New Markets Tax Credit ("NMTC") funds, and (iii) funds that qualify for Federal historic tax credits or similar State historic tax credit programs ("Historic Tax Credit Funds"). We support the Agencies determination that banking entities may both invest in, and sponsor, these types of funds. We believe this construction is consistent with the statutory intent of the public welfare fund exemption and will allow banking organizations to continue to serve as a strong source of equity to, and organizational and administrative support for, public welfare funds.

However, we believe additional modifications to the Proposed Rules are necessary to ensure that the rules do not disrupt the public welfare activities conducted by permissible public welfare funds and to promote the flow of credit to small and middle-market businesses.

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[33] See 15 U.S.C. § 78c(a)(29). We believe the Agencies have the authority to interpret the exception in 12 U.S.C. § 1851(d)(1)(A) in this manner. In any event, subsection (d)(1)(J) of the Volcker Rule (12 U.S.C. § 1851(d)(1)(J)) also clearly provides the Agencies the authority to ensure that banking entities may continue to provide liquidity to all issuers of tax-exempt municipal securities in light of the important public benefits provided by such activities.

[34] See MSRB Comment Letter.

[35] See 12 U.S.C. § 24(Seventh).

1. Public Welfare Funds Should Not Be Considered "Banking Entities." (Q. 7, 277)

In order to ensure that the exemption for public welfare funds is not unintentionally restricted by other provisions of the Proposed Rules, we believe that the Proposed Rules should be modified to provide that a public welfare fund permissibly controlled by a banking entity will not itself be considered a "banking entity." As the Agencies recognized in the preamble to the Proposed Rules, the definition of a "banking entity":

> "could include a covered fund that a banking entity has permissibly sponsored or made an investment in because, for example, the banking entity acts as general partner or managing member of the covered fund as part of its permitted sponsorship activities. If such a covered fund were considered a 'banking entity' for purposes of the proposed rule, the fund itself would become subject to all of the restrictions and limitations of [the Volcker Rule] and the proposed rule, which would be inconsistent with the purpose and intent of the statute."[36]

To avoid this result, the preamble indicates that "the proposed rule would exclude from the definition of banking entity any fund that a banking entity may invest in or sponsor as permitted by the proposed rule."[37] However, the rule text excludes from the definition of "banking entity" only those covered funds that are owned or controlled under the so-called "asset management exception" in §__11 of the Proposed Rules.[38] Consistent with the Agencies' rationale and statement in the preamble, we believe public welfare funds permissibly sponsored or controlled under the Proposed Rules also should be excluded from the definition of a banking entity.

2. Exemption for Limited Investments in Non-SBIC Funds That Provide Capital to Small and Middle-Market Companies. (Q. 276, 307)

As noted above, the Volcker Rule permits banking entities to continue to invest in and sponsor covered funds that are operated as a SBIC.[39] The Agencies' commentary on this exception notes that permitting SBIC investments would provide valuable funding and assistance to small businesses, be consistent with the safe and sound operation of banking entities, and promote the financial stability of the United States.[40] We support these statements and believe that, for the same reasons, the Agencies should expand the exception for SBICs further. Many small businesses and lower-middle-market businesses do not meet the criteria to be considered a "small business," as defined by the Small Business Administration.[41] In addition, even if a fund is established to provide equity capital to SBIC-eligible small businesses, its fund managers may choose not to

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[36] See 76 Federal Register at 68855-56.

[37] See id. at 68856.

[38] See Proposed Rules at §__.2(e)(4)(i).

[39] 12 U.S.C. § 1851(d)(1)(E).

[40] See 76 Federal Register at 68908.

[41] SBICs may invest only in a "small business" as that term is defined by the SBA. See 13 C.F.R. § 107.700 and part 121.

obtain an SBIC license due to the compliance and regulatory costs associated with becoming an SBIC. Further, the size of the SBIC market is but a small fraction of the entire private equity and venture capital finance market serving small and lower-middle-market businesses. From 1994 through 2010, it is estimated that approximately 500 SBICs were licensed and funded and that these funds had less than $30 billion in private capital. This is only a fraction of the more than 2,200 venture capital and private equity funds with $225 million or less in expected committed capital that are estimated to have been established during this same period and that had, in the aggregate, an estimated $220 billion in committed capital.

Small and lower-middle-market businesses are a crucial underpinning of our economy. Prohibiting banking entities from owning an interest in non-SBIC funds that provide funding to small and lower-middle-market businesses will make it harder for these businesses to raise needed capital and create jobs and will cause unnecessary market disruption. While banking entities could continue to directly invest in small and lower-middle-market business under the Proposed Rules, the inability to invest through funds will both restrict the flow of financing to small and middle-market companies and deprive banking entities of the ability to take advantage of the expertise of third-party fund managers in identifying the best opportunities and managing the risks of such investments through diversification.

Subsection (d)(1)(J) of the Volcker Rule provides the Agencies with discretion to permit banking entities to continue to invest in and sponsor a hedge fund or private equity fund if the Agencies find such activities promote and protect the financial stability of the United States and the safety and soundness of banking entities.[42] Permitting banking entities to invest a small portion of their capital in third-party managed funds that provide funding to small and lower middle-market companies would satisfy those criteria because the risk of loss to a banking entity and the financial system would be limited. In addition, because the fund would be managed by an unaffiliated third party, the indirect reputational or other risks associated with the investment also would be mitigated. Moreover, providing such an exemption would increase the pool of equity capital available to those businesses, keeping their cost of capital lower than would otherwise be the case, and enhancing the growth and stability of such businesses and the overall U.S. economy.

Accordingly, we respectfully request that the Agencies permit a banking entity to invest, in the aggregate, up to 3% of its Tier 1 capital in covered funds provided that each such fund: (i) is managed and advised by an unaffiliated person; (ii) invests primarily in small businesses and lower middle-market companies; and (iii) has a maximum capital commitment of $500 million and which may invest not more than $30 million in any single portfolio company.

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[42] 12 U.S.C. § 1851(d)(1)(J).

H. Capital Deduction for Investments made under the Asset Management Exception (Q. 269)

The Proposed Rules provide that, for purposes of calculating capital pursuant to applicable capital rules, a banking entity must deduct "the aggregate value of all permitted investments in all covered funds made or retained by a covered banking entity pursuant to [§__.12 of the Proposed Rules] . . . from the banking entity's tier 1 capital."[43] We believe the Agencies' existing risk-based capital rules, including the capital requirements applicable to investment fund equity exposures under the Agencies' Basel II advanced measurement approaches,[44] are adequate to address the risks posed by banking entity investments in a covered fund under the asset management exception. Accordingly, we believe the proposed special capital deduction included in §__.12(d) of the Proposed Rules should be removed from the final rules as it is not necessary or appropriate to protect the safety and soundness of banking entities.[45]

If, nevertheless, the final rules adopted by the Agencies include any special regulatory capital requirements for investments made under the asset management exception, we believe the Agencies should clarify that those requirements apply only to investments held directly by the banking entity or by an entity consolidated with the banking entity for financial reporting purposes. The regulatory capital rules of the Federal banking agencies generally apply to a banking organization on a consolidated basis. Thus, it would be inconsistent with the regulatory capital rules of the Federal banking agencies to require a banking entity to deduct from its Tier 1 capital an investment that is held by a company in which the banking entity only has a minority investment and where the banking entity accounts for its investment in the company under the cost or equity method of accounting.

We believe that applying any potential special capital requirement only to investments held under the asset management exception by the banking entity or a consolidated subsidiary also is consistent with the intent of the Proposed Rules. In this regard, § __.12(d) provides that the proposed deduction would apply to the aggregate value of the banking entity's investments "as determined under paragraph (c)(1)" of that section. Section __.12(c)(1), in turn, provides that the

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[43] See Proposed Rules § __.12(d). Section __.12 of the Proposed Rules implements the so-called "asset management exception" in subsection (d)(4) of the Volcker Rule (12 U.S.C. § 1851(d)(4)) that permits a banking entity to, among other things, hold up to 3 percent of a covered fund that is organized and offered by the banking entity, subject to certain conditions.

[44] See 12 C.F.R. part 225, App. G, § 54.

[45] We note that, while subsection (d)(4)(B)(iii) of the Volcker Rule (12 U.S.C. § 1851(d)(4)(B)(iii)) provides for the Agencies to apply a capital deduction for investments made under the asset management exception, this subsection also provides that such deduction shall occur only "[f]or purposes of determining compliance with applicable capital standards under [subsection (d)(3) (12 U.S.C. 1851(d)(3))]." Subsection (d)(3) *permits*, but does not require, the Agencies to impose additional capital requirements on permitted investments only if the Agencies determine that such additional capital and quantitative limitations are "appropriate to protect the safety and soundness of banking entities engaged in such activities." 12 U.S.C. § 1851(d)(3).

"the aggregate value of all ownership interests held by that banking entity . . . [shall be] determined in accordance with applicable accounting standards." Under applicable accounting standards, a banking entity does not record on its balance sheet an investment held by a company in which it holds a minority investment and that is accounted for under the cost or equity method of accounting; rather, the banking entity only reflects the investment in the company itself on its balance sheet.

I. Compliance Program and Reporting Requirements (Q. 319)

The Proposed Rules include two sets of compliance requirements. The first set, which is set forth in §__.20(a) and (b) of the Proposed Rules, requires all banking entities that are engaged in trading or covered fund activities subject to the Volcker Rule to establish, maintain and enforce a program that is (i) "reasonably designed to ensure and monitor compliance" with the restrictions of the Volcker Rule and the Agencies' implementing regulations and that is (ii) "appropriate for the size, scope and complexity of the activities and business structure of the covered banking entity."[46]

The second set requires banking entities whose trading or covered fund activities exceed certain dollar thresholds specified in the Proposed Rules to comply with (i) the extensive and detailed "programmatic" compliance requirements set forth in Appendix C of the Proposed Rules, and (ii) the extensive covered trading reporting requirements in Appendix A of the Proposed Rules.[47]

PNC agrees with the requirements set forth in §__.20(a) and (b) that all banking entities engaged in proprietary trading or covered fund activities that are subject to the Volcker Rule should have compliance programs that are:

- Reasonably designed to ensure and monitor compliance with the restrictions of the Volcker Rule and the Agencies' implementing regulations; and
- Appropriate for the size, scope and complexity of the activities and business structure of the banking entity.

Importantly, §__.20(b) would mandate that the compliance program of all entities engaged in activities subject to the Volcker Rule include, at a minimum, (i) internal written policies and procedures reasonably designed to ensure that the banking entity's activities comply with the Volcker Rule and the Agencies' implementing regulations; (ii) a system of internal controls reasonably designed to identify areas of potential noncompliance and prevent violations; (iii) a management framework that clearly delineates responsibility and accountability for compliance; (iv) independent testing of the effectiveness of the entity's compliance program; (v) appropriate training; and (vi) the maintenance and retention, for five years, of records sufficient to demonstrate compliance.

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[46] Proposed Rules at §__.20(a) and (b).

[47] Proposed Rules at §__.7 and §__.20(c).

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We believe that these requirements, by themselves, are sufficient to ensure that the vast majority of banking entities establish and maintain compliance programs that are strong, robust and tailored to the volume, nature, and complexity of the banking entity's trading and covered fund activities. We do not believe that the "programmatic" compliance requirements in Appendix C and the trading reporting requirements in Appendix A are necessary or appropriate for entities, like PNC, that traditionally have neither engaged to any meaningful extent in the types of proprietary trading activities the Volcker Rule was intended to prohibit nor held substantial investments in hedge funds or private equity funds that would be prohibited under the Volcker Rule. For these reasons, as discussed further below, we believe several modifications should be made to the triggering thresholds for the "programmatic" compliance requirements in Appendix C and the reporting requirements in Appendix A.

The Proposed Rules also would require that banking entities have developed and implemented whatever compliance program and reporting mechanisms are ultimately required by the Agencies' rules by July 21, 2012. We strongly believe that it is not proper—or feasible—for the Agencies to require that banking entities have in place on July 21, 2012, all aspects of their Volcker Rule compliance program.

1. Thresholds for Compliance with Appendices A and C Should be Raised and Adjusted. (Q. 161, 320, 321)

Under the Proposed Rules, a banking entity would be required to comply with the extensive "programmatic" compliance requirements in Appendix C if:

- The banking entity engages in proprietary trading and, together with its affiliates and subsidiaries, has trading assets and liabilities the average gross sum of which, on a worldwide consolidated basis (as measured on a 4-quarter rolling basis), equals or exceeds—
  - $1 billion; or
  - 10 percent or more of its total assets; or

- The banking entity invests in or has relationships with covered funds and either—
  - Has, together with its affiliates and subsidiaries, aggregate covered fund investments the average value of which (as measured on a 4-quarter rolling basis) is $1 billion or more; or
  - Sponsors and advises, together with its subsidiaries and affiliates, covered funds the average total assets of which (as measured on a 4-quarter rolling basis) are $1 billion or more.[48]

In addition, a banking entity would be subject to the extensive metrics reporting and recordkeeping requirements for trading activities in Appendix A if the banking entity, together with its affiliates

[48] Proposed Rules at §__.20(c). Under the Proposed Rules, the appropriate agency for a banking entity could also require a banking entity to comply with Appendix C even if the entity did not meet these thresholds.

and subsidiaries, has trading assets and liabilities the average gross sum of which, on a worldwide consolidated basis (as measured on a 4-quarter rolling basis) equals or exceeds $1 billion.

As noted above, we believe that all banking entities—regardless of size, complexity, or scope of their covered trading and fund activities—should have robust Volcker Rule compliance programs and that §__.20(a) and (b) of the Proposed Rules is sufficient to achieve this objective for virtually all banking organizations. However, we strongly believe that the proscriptive compliance requirements of Appendix A and Appendix C are not necessary or appropriate for regional banking organizations, like PNC, that traditionally have <u>not</u> engaged to any meaningful degree in prohibited proprietary trading and that have traditionally had <u>only</u> <u>limited</u> investments in, and relationships with, hedge funds or private equity funds intended to be prohibited by the Volcker Rule.

PNC does not have proprietary trading operations that engage in buying and selling securities or other covered financial instruments principally for PNC's own short-term profit. Rather, PNC's short-term covered trading activities in covered financial instruments are limited to meeting the needs of customers and other types of trading sought to be protected by the Volcker Rule, such as risk-mitigating hedging, trading in government and government-guaranteed securities, and asset-liability management activities. Likewise, PNC's investments in traditional private funds that are likely to have to be divested under the Volcker Rule constitute less than 0.5 percent of PNC's total assets as of December 31, 2011.

With this background, we respectfully believe that the compliance-related triggering thresholds in the Proposed Rules should be modified in the following ways.

a. <u>Threshold for Trading Assets and Liabilities Should be Raised to $10 Billion on a Consolidated Basis</u>. (Q. 150, 153, 154, 161, 162, 166, 319, 320, 321)

We believe the $1 billion threshold for trading assets and liabilities in §__.20(c)(2) and Appendix A, Part I, should be raised to $10 billion for several reasons. First, we expect that the costs of establishing and maintaining the detailed and extensive "programmatic" compliance program required by Appendix A, and the trading reporting and recordkeeping requirements in Appendix A, will be substantial even for an organization, like PNC, that does not engage in the type of proprietary trading sought to be prevented by the Volcker Rule. While organizations with very large trading operations will be able to spread the costs resulting from these compliance requirements over a large trading base, firms with more limited trading assets and liabilities will not be able to achieve these same economies of scale. Applying these compliance requirements to firms like PNC, therefore, may have the unintended consequence of encouraging more trading volume to migrate to the firms with the largest trading volumes.

Second, even if the dollar threshold were raised to $10 billion, an overwhelming percentage of the trading assets and liabilities in the banking industry would remain subject to the heightened compliance and reporting requirements of Appendix A and Appendix C. Within the banking industry, trading assets and liabilities are heavily concentrated at the largest, most complex banking organizations. As the below chart illustrates, data indicates that the twelve bank holding companies with the largest average amount of aggregate trading assets and liabilities for the four quarters

ending September 30, 2011, controlled more than 98 percent of the total average trading assets, and more than 97 percent of total average trading liabilities, of all U.S.-based bank holding companies, commercial banks, and savings banks during this period.[49] Moreover, each of these twelve banking organizations had average trading assets and liabilities of more than $15 billion during this 4-quarter period and, thus, would continue to be subject to the requirements of Appendix A and C even if the threshold were raised to $10 billion.

	Percentage of Combined Average Trading Assets of All Banking Organizations[1]	Percentage of Combined Average Trading Liabilities of All Banking Organizations
Banking Organizations with Combined Average Trading Assets and Liabilities of **$10 billion or more**	98.21	97.60
Banking Organizations with Combined Average Trading Assets and Liabilities of **Less Than $10 billion**	1.79	2.40

1. Source SNL Financial. Average trading assets and trading liabilities determined based on reported trading assets and liabilities reported as of September 30, 2010, and March 31, June 30, and September 30, 2011. U.S. banking organizations includes bank holding companies, commercial banks, and savings banks.

Finally, the 10 percent asset threshold included in the Proposed Rules[50] would continue to ensure that any banking entity that had aggregate trading assets and liabilities that constituted a significant percentage of the entity's overall assets would continue to be subject to the heightened compliance requirements in Appendix C. In light of these facts, we believe that public policy considerations strongly support raising the trading assets and liabilities threshold to $10 billion, and do not support extending these requirements to other organizations that have only limited trading assets and liabilities on both a relative and absolute basis. Similarly, we believe that a reasonable cost-benefit analysis strongly warrants raising this threshold to $10 billion.

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[49] Average trading assets for the industry also include the trading assets of savings associations. Savings associations do not report trading liabilities on the Thrift Financial Report.

[50] See Proposed Rules at §__.20(c)(2)(i)(B).

b. Covered Fund Thresholds Should Exclude SBIC and Public Welfare Funds and Covered Fund Relationships that Will be Terminated During Conformance Period. (Q. 276, 320, 321, 347)

We also believe that the $1 billion threshold on covered fund investments and assets in §__.20(c)(2)(ii) should not include the amount of investments in, or assets of, funds that (i) are a SBIC; (ii) are designed primarily to promote the public welfare of the type permitted by 12 U.S.C. § 24(Eleventh), such as LIHTC and NMTC funds; or (iii) are Historic Tax Credit Funds.

Investments in, and sponsorship of, each of these types of funds is permitted[51] by the Volcker Rule precisely because of the substantial public benefits associated with these types of investments and funds. For example, SBICs provide funding to our nation's small businesses. Funds that are designed primarily to promote the public welfare provide financial support for, among other things, affordable housing for low- and moderate-income individuals, small businesses that are located in low- and moderate-income areas or areas targeted for redevelopment, and community development financial institutions.[52]

Including these investments and funds in the dollar thresholds that trigger the programmatic compliance requirements of Appendix C, however, provides banking entities a powerful disincentive to invest in, or sponsor, SBICs, public welfare funds, or HTC funds if doing so could cause the organization to become subject to these extensive requirements. We believe such a result would be inconsistent with the purposes of the statutory exceptions for these types of funds.

We also believe that existing investments in, and relationships with, a covered fund that a banking entity is required by the Volcker Rule and the Agencies' implementing regulations to divest or terminate should not count towards the dollar thresholds that trigger compliance with Appendix C. It would be incongruous for the rules to require a banking entity to develop and implement the extensive programmatic compliance regime mandated by Appendix C simply as a result of investments in, or other relationships with, a covered fund that the banking entity is required to divest or terminate under the Volcker Rule. If such were the case, a banking entity may well be required to implement these compliance requirements only to see its obligation to maintain such a compliance regime disappear during the very same conformance period that the statute gave the firm to bring its investments and activities into compliance with the Volcker Rule's restrictions.

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[51] See 12 U.S.C. § 1851(d)(1)(E); Proposed Rules at §__13(a).

[52] See 12 C.F.R. § 24.6.

c. Compliance Program Requirements Should be Based on the Activities that Trigger Such Requirements. (Q. 160, 320, 321)

Under the Proposed Rules, a banking entity that exceeds the thresholds established for trading assets and liabilities must comply not only with those aspects of Appendix C that relate to proprietary trading activities, but also with those related to covered fund activities *even if the entity's covered fund activities do not meet the thresholds set forth in §__.20(c)(2)(ii).*[53] Likewise, a banking entity that exceeds the thresholds for covered fund activities in §__.20(c)(2)(ii) would have to comply with those aspects of Appendix C that relate to proprietary trading activities, *even if the entity's proprietary trading activities did not meet the thresholds applicable to trading assets and liabilities*.

We do not believe it is appropriate to require a banking entity that has very limited trading activities to establish the type of detailed and costly compliance regime dictated by Appendix C for its trading activities simply because the entity has covered fund investments or activities that exceed the thresholds triggering a "programmatic" compliance regime for those activities. The same is true in the reverse situation—a banking entity with more than the designated amount of trading assets and liabilities, but with covered fund investments and relationships that do not meet the final dollar thresholds applicable to covered fund activities, should not be required to establish and maintain the type of "programmatic" compliance regime described in Appendix C for its limited covered fund activities simply because of the size of its trading activities.

Rather, we believe that a banking entity that exceeds the thresholds established by the final rules for trading assets and liabilities, on the one hand, or covered fund relationships, on the other hand, should be subject to those aspects of Appendix C relating to the entity's proprietary trading activities or covered fund activities, respectively. Doing so would ensure that a banking entity is required to meet the components of Appendix C that relate to those activities that the Agencies determine to be significant, while avoiding application of Appendix C to other activities of the entity that do not meet the "significance" thresholds for such activity. Once again, we believe cost benefit and public policy considerations support our proposed approach.

d. Threshold Amounts Should be Determined on a Consolidated Basis. (Q. 160, 161, 162, 320, 321)

We support the aspects of both §__.20(c)(2)(i) and Appendix A, Part I, providing that the amount of a banking entity's trading assets and liabilities is to be determined on a consolidated basis, thereby including the trading assets and liabilities of the entity's consolidated subsidiaries and affiliates, but excluding the trading assets and liabilities of unconsolidated affiliates. Use of data that reflects trading assets and liabilities of the banking entity and its GAAP consolidated subsidiaries and affiliates has several benefits. Importantly, this is generally consistent with the manner in which banking organizations operate their businesses, as well as the manner in which they report their trading assets and liabilities for regulatory reporting purposes. See Federal Reserve Form FR Y-9C, Schedule HC-D (Trading Assets and Liabilities); Call Report, Schedule

[53] See Proposed Rules at §__.20(c).

RC-D (Trading Assets and Liabilities). It also helps prevent evasions of the trading assets and liabilities thresholds while appropriately avoiding a requirement that banking organizations monitor and track the trading assets and liabilities of entities that are not consolidated with the banking entity for financial reporting purposes.

We believe a similar approach should be taken with respect to the investment and asset thresholds applicable to covered funds in §__.20(c)(2)(ii) of the Proposed Rules. In particular, we believe these thresholds should be based on the investments made in covered funds, and the assets of covered funds sponsored or advised, by the relevant banking entity and its consolidated subsidiaries and affiliates, with the exclusions discussed above.

2. Banking Entities Should Have at Least One Year After Final Rules are Issued to Implement Appropriate Compliance Programs. (Q. 1, 2, 3 and 4)

PNC recognizes the significant effort that the Agencies have put into developing and issuing for public comment the Proposed Rules. However, we believe that it is not appropriate or feasible to require that a banking entity have in place on July 21, 2012, the complete compliance program that the entity ultimately will need to help ensure compliance with the Agencies' final rules implementing the Volcker Rule.

All banking entities will need a sufficient period of time after final regulations are adopted by the Agencies to implement a Volcker Rule compliance program. This will include adequate time to assess the terms and requirements of the final regulations, develop an implementation plan for a program that is appropriate to the nature, scope, and complexity of the banking entity and its covered trading and private fund activities, obtain necessary internal approvals, and implement the program.

Requiring a banking entity to have in place on July 21, 2012, all aspects of its Volcker Rule compliance program also is inconsistent with the automatic two-year period that the statute itself provides banking entities to bring their activities and investments into compliance with the requirements of the Volcker Rule.[54] It would seem illogical to believe that Congress intended banking entities to have fully developed compliance programs in place on July 21, 2012, when the statute itself does not require banking entities to be in full compliance with the Volcker Rule's substantive restrictions until July 21, 2014, at the earliest.

Rather, we believe that banking entities should have, at a minimum, one year after final rules are issued by the Agencies under the Volcker Rule to develop and implement a Volcker Rule compliance program that is appropriate to the size, complexity and nature of the entity's trading and covered fund activities. In light of the significant uncertainties surrounding how the Agencies will address the numerous and substantive comments on the Proposed Rules, and the likely complex nature and scope of any final rules, we believe providing banking entities such a one year period is particularly appropriate.

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[54] 12 U.S.C. § 1851(c)(2).

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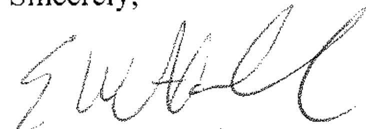
J. Conclusion

Thank you for the opportunity to comment on the Proposed Rules. As the Agencies move forward with implementation of the Volcker Rule, we believe it is very important that the Agencies develop rules that implement the Volcker Rule in a way that avoids the risk of serious unintended and undesirable consequences, including those that might inadvertently increase risk to banking entities, reduce the availability of liquidity or credit to consumers or businesses, or harm the nation's economic recovery and future growth opportunities. We hope you find the comments we have provided useful in this endeavor. Please do not hesitate to contact me, at (212) 527-3003, or Robert Hoyt, Executive Vice President, Senior Deputy General Counsel and Chief Regulatory Affairs Officer, at (412) 768-2178, if you have any questions regarding this letter.

Sincerely,



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