

October 17, 2017

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1608; RIN 7100-AF 06
Via Electronic Mail

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File No. S7-14-18
Via Electronic Mail

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN: 3064-AE67
Via Electronic Mail

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC-2018-0010
Via Electronic Mail

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
RIN: 3038-AE72
Via Agency Website

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

BMO Financial Corp. (together with its affiliates and subsidiaries, "BMO") appreciates the opportunity to comment on the notice of proposed rulemaking ("Proposal")¹ issued by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission ("CFTC") (collectively, the "Agencies") requesting comments on a proposal (the "Proposed Rule") that would amend the regulations implementing section 13 of the Bank Holding Company Act of 1956 (the "Statute")², commonly referred to as the Volcker Rule (the "Volcker Rule" or the "Rule").

We agree with the Agencies that certain aspects of the Rule and its implementation can and should be simplified and tailored. Through well-drafted amendments, the Agencies can better

¹ 83 Fed. Reg. 33432 (July 17, 2018).

² 12 U.S.C. §1851.

accomplish the purposes of the Statute, appropriately tailor the compliance burden on banking entities, and help foster prudent economic growth.

Several trade organizations plan to submit letters setting forth suggestions and comments in response to the Agencies' request, and we have participated in a number of discussions regarding those letters. Specifically, we expect comments to be submitted regarding the manner in which banking entities calculate their respective trading assets and liabilities ("TALs") for purposes of the Proposed Rule's tiered compliance structure. We are submitting this letter in order to provide BMO's views with regard to the TALs calculation.

We believe that a banking entity's TALs, for purposes of the final Rule, should exclude (i) all domestic government obligations in which a banking entity is permitted to trade pursuant to Section 6(a) of the Rule ("Permitted Domestic Obligations"),³ and (ii) all foreign government obligations in which a banking entity is permitted to trade pursuant to Section 6(b) of the Rule ("Permitted Foreign Obligations"). We therefore recommend that the Agencies amend the Rule to expressly provide that such items are excluded from a banking entity's TALs.

In addition, we believe that a banking entity's TALs, for purposes of the existing Rule as well the Proposed Rule, include, and should include, only those assets and liabilities that constitute "financial instruments" pursuant to the Rule. We therefore recommend that the Agencies clarify in the final Rule that any assets or liabilities that do not constitute "financial instruments" are excluded from a banking entity's TALs.

The Statute, the Rule and the Proposed Rule all expressly permit banking entities to invest in an enumerated list of Permitted Domestic Obligations without being subject to the proprietary trading restrictions. By permitting such investments and exempting them from the Rule's proprietary trading restrictions, we believe Congress and the Agencies made the determination that such securities do not subject banking entities to a high level of risk and determined that trading in such obligations promotes

³ Specifically, Section 6(a) of the Rule permits a banking entity to trade in the following financial instruments:

- (1) An obligation of, or issued or guaranteed by, the United States;
- (2) An obligation, participation, or other instrument of, or issued or guaranteed by, an agency of the United States, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);
- (3) An obligation of any State or any political subdivision thereof, including any municipal security; or
- (4) An obligation of the FDIC, or any entity formed by or on behalf of the FDIC for purpose of facilitating the disposal of assets acquired or held by the FDIC in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

and protects the safety and soundness of the applicable banking entities and the financial stability of the United States.

The TALs provisions, however, as currently drafted in both the Rule and the Proposed Rule, do not treat all Permitted Domestic Obligations consistently. The TALs provisions exclude from the TALs calculation only a subset of Permitted Domestic Obligations – those “involving obligations of, or guaranteed by, the United States or any agency of the United States.” Treating certain of such securities differently for purposes of the TALs calculation⁴ is inconsistent with the determination that all such securities qualify as Permitted Domestic Obligations. Further, basing a determination as to whether or not a banking entity has a significant trading book, thereby requiring a complex compliance structure, on the amount of a banking entity’s investments in a subset of Permitted Domestic Obligations seems wholly incongruous with the Rule’s broad exemption for trading in Permitted Domestic Obligations.

All Permitted Domestic Obligations, not just a subset thereof, should be excluded from a banking entity’s TALs. If Congress and the Agencies have determined that a banking entity may invest in Permitted Domestic Obligations pursuant to Section 6(a) without being subject to the trading restrictions in the Volcker Rule, trading in those same Permitted Domestic Obligations should not cause a banking entity to be subject to a heightened Volcker Rule compliance burden.

The Rule and the Proposed Rule also expressly permit banking entities to invest in Permitted Foreign Obligations. For a number of the same reasons stated above (*i.e.*, the Agencies’ determination that trading in such obligations promotes and protects the safety and soundness of the applicable banking entities and the financial stability of the United States), banking entities may invest in Permitted Foreign Obligations in accordance with Section 6(b) without being subject to the trading restrictions in the Volcker Rule. As with Permitted Domestic Obligations, all Permitted Foreign Obligations should be excluded from a banking entity’s TALs, as the determination as to whether a banking entity has a significant trading book should not be based on trading in Permitted Foreign Obligations when the Agencies have determined that such trading is permissible without limitation and is beneficial to the banking entity and the United States.

Similarly, trading in non-financial instruments (such as loans) should not cause a banking entity to be subject to a heightened Volcker Rule compliance burden. The Agencies have judiciously elected to impose the Rule’s trading restrictions only with respect to “financial instruments.” Trading in non-financial instruments is simply not subject to the Rule or the Proposed Rule. Therefore, we believe a banking entity’s TALs does not, and should not, include non-financial instruments. We recommend that the Agencies expressly clarify that only financial instruments should be included in a banking entity’s TALs.

⁴ For example, excluding from the TALs calculation securities issued by the Government National Mortgage Association, but not excluding securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

For the reasons stated above, BMO suggests, and respectfully requests, that the Agencies amend the Rule to expressly provide that a banking entity's TALs, for purposes of the final Rule, exclude (i) all Permitted Domestic Obligations, and (ii) all Permitted Foreign Obligations. In addition, we further suggest that the Agencies expressly clarify in the final Rule that only "financial instruments," as defined in the final Rule, should be included in a banking entity's TALs. We believe these changes would add clarity to the Rule and help appropriately align banking entities' compliance burdens with their respective risk levels.

Thank you once again for the opportunity to provide input on this important matter. Please do not hesitate to contact me if you have any questions or would like to discuss the above.

Sincerely,



Daniela O'Leary-Gill
Chief Operating Officer
BMO Financial Corp.