

March 11, 2019

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Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2018-0029

Securities and Exchange Commission
Brent J. Fields, Secretary
100 F Street NE
Washington, DC 20549-1090
File No. S7-30-18

Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1643; RIN 7100-AF 33

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

Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
550 17th Street, NW
Washington, DC 20429
RIN: 3064-AE88

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:

The Investment Adviser Association¹ (IAA) appreciates the opportunity to comment on the five Volcker Agencies'² request for public comment³ on proposed amendments to the final

¹ The IAA is a not-for-profit association dedicated to advancing the interests of investment adviser firms registered with the Securities and Exchange Commission (SEC). The IAA's more than 650 member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit our website: www.investmentadviser.org.

² The Volcker Agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the SEC, and the Commodity Futures Trading Commission.

rule implementing the Volcker Rule Statute⁴ to conform to statutory amendments made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (**EGRRCPA**), enacted on May 24, 2018. Our comments relate solely to the modification of name-sharing restrictions of the Volcker Rule to conform to the EGRRCPA.⁵

The “asset management exemption” in the Volcker Regulations provides that a banking entity may sponsor a covered fund subject to a number of conditions, including that the covered fund “does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof).”⁶ According to the Agencies, the prohibition on name-sharing is intended to prevent “customer confusion regarding the relationship between the banking entity and the covered fund,” and also not “mislead an investor into thinking that the banking entity or any of its affiliates, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or any covered fund in which such covered fund invests.”⁷

We fully support the conforming amendments proposed by the Agencies, which would: (i) amend the definition of “banking entity” to exclude certain smaller banks; and (ii) permit a banking entity that is not an insured depository institution (**IDI**) or bank holding company (**BHC**) and that sponsors a covered fund to use its name or a variation of its name in the name of the fund under certain conditions.

³ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 84 Fed. Reg. 2,778 (Dec. 18, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2019-02-08/pdf/2019-00797.pdf>. Docket ID OCC-2018-0029; Board Docket No. R-1643; RIN 7100-AF 33; FDIC RIN 3064-AE88; SEC File Number S7-30-18; CFTC RIN 3038-AE72.

⁴ Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851); *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, 79 Fed. Reg. 5,536 (Jan. 31, 2014); and *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 79 Fed. Reg. 5,808 (Jan. 31, 2014) (**Volcker Rule Regulations**).

⁵ We have previously commented on the Agencies’ more comprehensive proposed amendments published in July 2018, which remain pending, and we continue to urge the Agencies to consider the issues we raised. See Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, to the Agencies re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (Oct. 16, 2018), available at https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/IAA_Volcker_Proposed_Amendments_Comment_Letter_FINAL.pdf.

⁶ 12 C.F.R. § 44.11(a)(6)(i).

⁷ Volcker FAQ No. 6, Namesharing Prohibition, available at <https://www.occ.treas.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-rule-implementation-faqs.html>.

However, with respect to the name sharing modification, we ask that the Agencies allow for a very limited exception to the condition that the fund manager's name not be the same as or a variation of the name of an affiliated IDI or BHC where the fund is required or expected by local regulators to use the name of the fund manager and the manager shares a name or variation of a name with its banking entity affiliate, as long as this is done with appropriate disclosure. For example, we understand that under Chinese regulations, certain private funds (including those that an asset manager may treat as covered funds) are required to use the name of the fund manager in their cash settlement accounts and security accounts.⁸ We understand that the China Securities Regulatory Commission has strongly advised that the name of the fund manager also be used in the name of the product. Furthermore, we understand that regulators in certain jurisdictions, such as Taiwan and Hong Kong, expect retail funds to include the name of the fund manager in the name of the fund. We also understand that there are jurisdictions that prohibit a fund's name from being misleading. We are concerned that following these types of requirements or regulatory expectations of local jurisdictions could conflict with the revised name-sharing restrictions.

We believe that providing limited relief on the name-sharing restrictions where the name-sharing is required or expected under local law would be consistent with the Agencies' previously-stated intent to limit the extra-territorial impact of the Volcker Rule. To the extent that the Agencies are concerned about investor confusion about the role of the banking entity or perceived "bailout" risk, we note that the funds would still be required to comply with the written disclosure requirements under the asset management exemption, which should mitigate these concerns.⁹

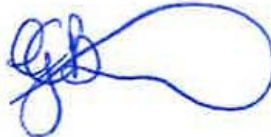
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⁸ See "Provisions on the Administration of Operation of Privately Offered Asset Management Plans of Securities and Futures Business Institutions," available at <http://www.lawinfochina.com/display.aspx?id=29332&lib=law>. **Article 12** An asset management plan shall open a capital account, securities account, futures account and other accounts as required, and the name of the capital account shall be the "name of the asset management plan," and the name of the securities account or futures account of the collective asset management plan shall be the "name of the securities and futures business institution – name of the custodian – name of the asset management plan." The name of the securities account or futures account of a single asset management plan shall be "the name of the securities and futures business institution – name of the investor – name of the asset management plan."

⁹ The asset management exemption expressly prohibits a banking entity and its affiliates from directly or indirectly guaranteeing, assuming, or otherwise insuring the obligations or performance of the fund, thus prohibiting the banking entity from bailing out a covered fund. It also is designed to ensure that investors understand that there will be no bailout, by requiring clear and conspicuous written disclosure to actual and prospective investors. 12 C.F.R. § 44.11(a)(8)(i).

We commend the Agencies for proposing these conforming amendments to the Volcker Rule Regulations and we appreciate the opportunity to provide comments on the proposed revisions. Please do not hesitate to contact the undersigned at (202) 293-4222 if we can be of further assistance.

Respectfully,



Gail C. Bernstein
General Counsel

cc: Honorable Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve System

Joseph M. Otting, Comptroller of the Currency
Office of the Comptroller of the Currency

Honorable Jelena McWilliams, Chairman
Federal Deposit Insurance Corporation

Honorable Jay Clayton, Chairman
Securities and Exchange Commission

Honorable J. Christopher Giancarlo, Chairman
Commodity Futures Trading Commission

Honorable Robert J. Jackson Jr., Hester M. Peirce, and Elad L. Roisman, Commissioners,
Securities and Exchange Commission

Dalia Blass, Director, Division of Investment Management, Securities and Exchange
Commission