DEPARTMENT OF TREASURY
Office of the Comptroller of the Currency
12 CFR Part 44
Docket No. [OCC-2018-0029]
RIN [1557-AE47]

FEDERAL RESERVE SYSTEM
12 CFR Part 248
Docket No. [R-16XX]
RIN [7100-AF XX]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 351
RIN [3064-AE88]

SECURITIES AND EXCHANGE COMMISSION
17 CFR Part 255
Release no. [BHCA-X; File no. X]
RIN [3235-AM43]

COMMODITY FUTURES TRADING COMMISSION
17 CFR Part 75
RIN [3038-AE72]

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

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Securities and Exchange Commission (SEC); and Commodity Futures Trading Commission (CFTC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, SEC, and CFTC (individually, an Agency, and collectively, the Agencies) are requesting comment on a proposal to amend the regulations implementing section 13 of the Bank Holding Company Act (BHC Act) in a manner consistent with the statutory amendments made pursuant to sections 203 and 204 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Specifically, the statutory amendments (1) exclude from section 13's restrictions certain firms that have total consolidated assets equal

to $10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets and (2) amend the restrictions applicable to the naming of a hedge fund or private equity fund to permit an investment adviser that is a banking entity to share a name with the fund under certain circumstances.

DATES:

Comment date: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**. Comments on the Paperwork Reduction Act burden estimates must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "**Proposed Revisions to Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds**" to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "**Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds"** to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- ***Federal eRulemaking Portal—"regulations.gov":*** Go to *www.regulations.gov*. Enter "Docket ID [**OCC-2018-0029]**" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- **E-mail:** *regs.comments@occ.treas.gov*.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- **Fax:** (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "[Docket ID **OCC-2018-0029]**" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to *www.regulations.gov*. Enter "Docket ID [**OCC-2018-0029]**" in the Search box and click "Search." Click on "Open Docket Folder" on

the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov. Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally**: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by [Docket No. R-16XX; RIN 7100-AF XX], by any of the following methods:

- **Agency website:** http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- **E-mail:** regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. All public comments are available from the Board's website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless

modified for technical reasons or to remove sensitive personal information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street, NW. (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by [RIN 3064-AE88] by any of the following methods:

- **Agency website:** http://www.FDIC.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency website.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand Delivered/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- **E-mail:** comments@FDIC.gov. Include the [RIN 3064-AE88] on the subject line of the message.
- **Public Inspection:** All comments received must include the agency name and [RIN 3064-AE88] for this rulemaking. All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal/, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 or by telephone at (877) 275-3342 or (703) 562-2200.

SEC: You may submit comments by the following methods:

Electronic Comments

- Use the SEC's internet comment form (http://www.sec.gov/rules/proposed.shtml); or

Send an e-mail to rule-comments@sec.gov. Please include [File Number S7-14-18] on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to [File Number **S7-14-18]**. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's website (http://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the SEC's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that the SEC does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the SEC or SEC staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

CFTC: You may submit comments, identified by [RIN 3038-AE72] and "Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds," by any of the following methods:

- **Agency website**: https://comments.cftc.gov. Follow the instructions on the Web site for submitting comments.

- **Mail**: Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- **Hand delivery/Courier**: Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in CFTC Regulation 145.9.1. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, 202-649-6360; Tabitha Edgens, Senior Attorney; Mark O'Horo, Attorney, Chief Counsel's Office, (202) 649-5510; for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

Board: Page Conkling, Senior Supervisory Financial Analyst, (202) 912-4647, Kevin Tran, Supervisory Financial Analyst, (202) 452-2309, Amy Lorenc, Financial Analyst, (202) 452-5293, David Lynch, Deputy Associate Director, (202) 452-2081, David McArthur, Senior Economist, (202) 452-2985, Division of Supervision and Regulation; Flora Ahn, Special Counsel, (202) 452-2317, Gregory Frischmann, Senior Counsel, (202) 452-2803, or Kirin Walsh, Attorney, (202) 452-3058, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov*, Andrew D. Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov*, or Brian Cox, Capital Markets Policy Analyst, *brcox@fdic.gov*, Capital Markets Branch, (202) 898-6888; Michael B. Phillips, Counsel, *mphillips@fdic.gov*, Benjamin J. Klein, Counsel, *bklein@fdic.gov*, or Annmarie H. Boyd, Counsel, *aboyd@fdic.gov*, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SEC: Andrew R. Bernstein, Senior Special Counsel, Sam Litz, Attorney-Adviser, Aaron Washington, Special Counsel, Elizabeth Sandoe, Senior Special Counsel, Carol McGee, Assistant Director, or Josephine J. Tao, Assistant Director, at (202) 551-5777, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, and Nicholas Cordell, Senior Counsel, Matthew Cook, Senior Counsel, Aaron Gilbride, Branch Chief, Brian McLaughlin Johnson, Assistant Director, and Sara Cortes, Assistant Director, at (202) 551-6787 or *IArules@sec.gov*, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

CFTC: Cantrell Dumas, Special Counsel, (202) 418-5043, *cdumas@cftc.gov*; Jeffrey Hasterok, Data and Risk Analyst, (646) 746-9736, *jhasterok@cftc.gov*, Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418-6636, *mfajfar@cftc.gov*, Office of the General Counsel; Stephen Kane, Research Economist, (202) 418-5911, *skane@cftc.gov*, Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 13 of the Bank Holding Company Act of 1956 ("BHC Act"),[1] also known as the Volcker Rule, generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions.[2]

Under the statute, authority for developing and adopting regulations to implement the prohibitions and restrictions of section 13 of the BHC Act is shared among the Agencies.[3] The

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[1] 12 U.S.C. 1851. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was enacted on July 21, 2010. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company Act of 1956.

[2] *See* 12 U.S.C. 1851.

[3] *See* 12 U.S.C. 1851(b)(2). Under section 13(b)(2)(B) of the BHC Act, rules implementing section 13's prohibitions and restrictions must be issued by: (i) the appropriate Federal banking agencies (i.e., the Board, the OCC, and the FDIC), jointly, with respect to insured depository institutions; (ii) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an appropriate Federal banking agency, the SEC, or the CFTC is the primary financial regulatory agency); (iii) the CFTC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act; and (iv) the SEC with respect to any entity for which

Agencies adopted final rules implementing section 13 of the BHC Act in December 2013.[4] The Agencies recently proposed amendments to these rules to provide clarity about what activities are prohibited and to improve supervision and implementation of section 13 of the BHC Act.[5]

II. Recently Enacted Statutory Revisions to the Volcker Rule

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended section 13 of the BHC Act by modifying the definition of "banking entity," to exclude certain small firms from section 13's restrictions and by permitting a banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.[6]

The Agencies are proposing to amend the regulations implementing section 13 of the BHC Act in a manner consistent with the statutory amendments made by EGRRCPA.

A. Definition of Banking Entity

Prior to the enactment of EGRRCPA, the definition of "banking entity," for purposes of section 13 of the BHC Act, included any insured depository institution, as defined in the Federal

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it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act. *See id.*

[4] *See* "Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds; Final Rule," 79 FR 5535 (Jan. 31, 2014) (the "2013 final rule").

[5] *See* "Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds," 83 FR 33432 (July 17, 2018).

[6] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, sections 203, 204 (May 24, 2018). These provisions were effective upon EGRRCPA's enactment.

Deposit Insurance Act (FDI Act),[7] any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (IBA), and any affiliate or subsidiary of such entity (excluding from the term insured depository institution certain insured depository institutions that function solely in a trust or fiduciary capacity, subject to a variety of conditions).[8]

EGRRCPA modifies the scope of the term "banking entity" to exclude certain community banks and their affiliates. Therefore, an insured depository institution and its affiliates generally are not "banking entities" if each affiliated insured depository institution meets the statutory exclusion.[9] However, EGRRCPA did not amend the definition of "banking entity" as it relates to a company that is treated as a bank holding company for purposes of section 8 of the IBA. Therefore, the statutory exclusion does not apply to a foreign banking organization with a U.S. branch or agency, which continues to be subject to the prohibitions in section 13 of the BHC Act.

Pursuant to Section 203 of EGRRCPA, the term "insured depository institution" does not include an institution that does not have, and is not controlled by a company that has: (i) more

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[7] Section 3(c)(2) of the FDI Act defines an insured depository institution to include any bank or savings association the deposits of which are insured by the FDIC under the FDI Act. 12 U.S.C. 1813(c)(2).

[8] 12 U.S.C. 1813(c)(2), 1851(h)(1).

[9] Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, §§ 203, 204 (May 24, 2018). Section 203 amended section 13(h)(1)(B) of the BHC Act to narrow the scope of the term "banking entity" by excluding certain institutions from the term "insured depository institution" exclusively for the purposes of section 13. Insured banks and savings associations that qualify for this exclusion for the purposes of section 13 of the BHC Act remain insured depository institutions under section 3(c)(2) of the FDI Act. Additionally, an institution that meets the criteria to be excluded from the definition of insured depository institution under EGRRCPA may still be a banking entity by virtue of its affiliation with another insured depository institution or a company that is treated as a bank holding company under section 8 of the IBA.

than $10 billion in total consolidated assets; and (ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets. Consistent with the statute, the Agencies are proposing to modify the definition of "insured depository institution" in § __.2(r) of the 2013 final rule in order to conform that definition with Section 203 of EGRRCPA. Under the proposal, an insured depository institution would need to satisfy two conditions to qualify for the exclusion from the definition of "banking entity." First, the insured depository institution, and every entity that controls it, must have total consolidated assets equal to or less than $10 billion. Second, total consolidated trading assets and liabilities of the insured depository institution, and every entity that controls it, must be equal to or less than five percent of its total consolidated assets.

As described above, the exclusion would be available only if both the threshold regarding total consolidated assets and the threshold regarding total consolidated trading assets and liabilities are not exceeded. The Agencies believe that insured depository institutions that qualify for the exclusion in this proposal regularly monitor their total consolidated assets and total trading assets and liabilities for other purposes. Therefore, the Agencies do not believe that the test described above would impose any new burden on banking institutions. Rather, the Agencies would expect to use available information, including information reported on regulatory reporting forms available to each Agency, with respect to whether financial institutions qualify for the exclusion described above.

B. Modification of Name-Sharing Restrictions of the Volcker Rule

Prior to enactment of EGRRCPA, section 13 provided that a banking entity (or an affiliate of the banking entity), including an investment adviser, that organized and offered a hedge fund or private equity fund could not share the same name or a variation of the same name

with the fund (the name-sharing restriction).[10] Section 204 of EGRRCPA amended section 13 of the BHC Act to permit a hedge fund or private equity fund[11] organized and offered by a banking entity to share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if: (1) the investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the IBA;[12] (2) the investment adviser does not share the same name or a variation of the same name with any such entities; and (3) the name does not contain the word "bank."

Consistent with the statute, the Agencies are proposing to modify the 2013 final rule's name-sharing restriction to conform that restriction with Section 204 of EGRRCPA. Under the proposal, a hedge fund or private equity fund sponsored by a banking entity would be permitted to share the same name or a variation of the same name with a banking entity that is an investment adviser to the fund, subject to the conditions specified in the statute.[13] Specifically, these conditions would require that the investment adviser is not, and does not share the same name (or a variation of the same name) as, an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978.[14] The third condition – that the name does not contain the word "bank" – was included in the name-sharing

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[10] 12 U.S.C. 1851(d)(1)(G)(vi) (2017).

[11] 12 U.S.C. 1851(h)(2). *See also* 12 CFR 44.10(b); 12 CFR 248.10(b); 12 CFR 351.10(b); 17 CFR 255.10(b); 17 CFR 75.10(b).

[12] 12 U.S.C. 3106.

[13] Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, § 204 (May 24, 2018).

[14] 12 U.S.C. 1851(d)(1)(G)(vi)(I); 12 U.S.C. 1851(d)(1)(G)(vi)(II).

restriction by Section 204 of EGRRCPA but already is a condition under the 2013 final rule. Accordingly, the Agencies believe no additional modifications to the 2013 final rule are necessary to reflect this condition.

The proposal would also conform the 2013 final rule to the statutory change to the definition of "sponsor."[15] Pursuant to Section 204 of EGRRCPA, the definition of the term "sponsor" includes a banking entity that shares the same name or a variation of the same name with a fund, for corporate, marketing, promotional, or other purposes, "except as permitted under subsection (d)(1)(G)(vi)" – that is, except as permitted pursuant to the name-sharing restriction as amended by EGRRCPA. Consistent with the statute, the Agencies are proposing to modify the definition of "sponsor" in §__.10(d)(9) of the 2013 final rule in order to conform that definition with Section 204 of EGRRCPA.

III. Request for Comment

The Agencies invite comment from all members of the public regarding all aspects of the proposal. This request for comment is limited to this proposal. The Agencies will carefully consider all comments that relate to the proposal. In particular, the Agencies request comment on the following questions:

Question [__]. Does the proposal provide sufficient clarity for firms to determine whether they qualify for the exclusion from the "banking entity" definition? If not, please explain why.

Question [__]. Does the proposal provide sufficient clarity for firms to determine whether a hedge fund or private equity fund sponsored by a banking entity is permitted to share

[15] Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, § 204 (May 24, 2018).

the same name or a variation of the same name with an affiliated banking entity? If not, please explain why.

IV. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the proposal contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies reviewed and determined that the proposal would not change the current reporting, recordkeeping or third-party disclosure requirements associated with section 13 of the BHC Act under the PRA. However, the proposal would reduce the number of respondents for the Board (including OCC-, FDIC-, SEC-, and CFTC-supervised institutions under a holding company), FDIC (with respect to supervised institutions not under a holding company), and OCC (supervised institutions not under a holding company), which will be addressed as a nonmaterial change to OMB.

B. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act[16] requires the OCC, Board, and FDIC (Federal banking agencies) to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comments on whether there are additional steps the Federal banking agencies could take to make the proposed rule easier to understand. For example:

[16] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471, 12 U.S.C. 4809 (1999).

• *Have the Agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?*

• *Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?*

• *Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?*

• *Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?*

• *What else could the Agencies do to make the regulation easier to understand?*

C. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)[17] imposes certain requirements on agencies regarding any potential significant economic impact that a proposal may have on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[18] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the proposal is $550 million or less in consolidated assets.[19] The Agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this proposal.

Board

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[17] 5 U.S.C. 601 *et seq.*

[18] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at* https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[19] *See id*. Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The RFA requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

1. Reasons for the Proposal

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the regulations implementing section 13 of the BHC Act in conformance with the amendments to section 13 implemented by EGRRCPA. The proposal would therefore exclude from the definition of "banking entity" certain firms that have total consolidated assets equal to $10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets. Qualifying institutions eligible for this exclusion would consist of state member banks, bank holding companies, and savings and loan holding companies that meet the eligibility criteria for the exclusion. Such institutions would be exempt from the prohibitions and restrictions under section 13 of the BHC Act.

2. Statement of Objectives and Legal Basis

As discussed above, the Agencies' objective in proposing amendments to the regulations implementing section 13 of the BHC Act is to conform the regulations to changes recently implemented by sections 203 and 204 of EGRRCPA. The Agencies are explicitly authorized under section 13(b)(2) of the BHC Act to adopt rules implementing section 13.[20]

3. Description of Small Entities to Which the Regulation Applies

[20] 12 U.S.C. 1851(b)(2).

The Agencies' proposal would apply to state member banks, bank holding companies, and savings and loan holding companies supervised by the Board that are small entities for purposes of the RFA.[21]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed previously in the Paperwork Reduction Act section, the proposal would not change the current reporting, recordkeeping or third-party disclosure requirements associated with section 13 of the BHC Act under the PRA. However, the proposal would exempt small entities supervised by the Board from the reporting, recordkeeping, and all other requirements associated with section 13 of the BHC Act.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

6. Discussion of Significant Alternatives

The Board believes the proposed amendments will not have a significant economic impact on small banking entities supervised by the Board and therefore believes that there are no significant alternatives to the proposal that would reduce the economic impact on small banking entities supervised by the Board.

OCC

[21] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

[OCC RFA analysis to be inserted]

FDIC

The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.[22] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBA has defined "small entities" to include banking organizations with total assets less than or equal to $550 million.[23] The FDIC supervises 3,575 depository institutions,[24] of which 2,763 are defined as small banking entities by the terms of the RFA.[25] Of the 2,763 small, FDIC-supervised institutions, all report having total consolidated assets less than or equal to $10 billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, and are therefore, covered by the proposed rule.

Although the proposed rule would conform the FDIC's regulation to the statute in a way that is relevant to 2,763 small, FDIC-supervised institutions, the effects of the proposed rule itself would not have a significant economic impact. The statutory changes established by

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[22] 5 U.S.C. 601 *et seq.*

[23] The SBA defines a small banking organization as having $550 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." 13 CFR 121.201 n.8 (2018). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . ." 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

[24] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[25] Call Report: June 30, 2018.

EGRRCPA enabled certain institutions to engage in proprietary trading[26], thereby potentially increasing the volume of such activity for affected banking entities. The proposed rule would amend the FDIC's regulations to conform to this exemption established in EGRRCPA. Therefore, this component of the rule would have no direct effect on small, FDIC-supervised institutions.

As previously stated, EGRRCPA permits a covered fund organized and offered by a banking entity to share the same name, or a variation of the same name, as a banking entity that is an affiliated investment adviser to the hedge fund or private equity fund, with some restrictions. By permitting a covered fund to share the name of a banking entity, or variation thereof, the fund can utilize the franchise value of the banking entity to more effectively market the fund to the bank's current account holders or the public. The size of this potential benefit is difficult to accurately estimate with available data because it depends on the business model of individual banks and funds, the propensity of those funds to advertise to particular groups, and the decisions of customers, among other things. However, since the proposed rule would conform FDIC regulations with the statutory language enacted by EGRRCPA, this component of the proposed rule would have no direct effect on small, FDIC-supervised institutions.

Finally, the proposed rule would introduce conforming changes that would reduce recordkeeping, reporting, and disclosure costs for affected FDIC-supervised institutions. EGRRCPA states that certain institutions with total consolidated assets less than or equal to $10 billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, are excluded from restrictions on engaging in proprietary trading activity. The proposed rule would amend the FDIC's regulations to conform to this exclusion established

[26] 12 CFR 351.3(a).

in EGRRCPA. In so doing, the proposed rule would make conforming changes to reduce the recordkeeping and reporting requirements for small, FDIC-supervised institutions that were excluded from proprietary trading restriction by EGRRCPA. Although the vast majority of small, FDIC-supervised institutions are not currently required to comply with the recordkeeping, reporting, or disclosure requirements associated with proprietary trading, the proposed rule would introduce conforming changes that would exclude some small, FDIC-supervised institutions. Of these newly excluded institutions, the proposed rule would conform the Section 203 of EGRRCPA, which reduced recordkeeping, reporting, or disclosure requirements by up to 8 hours per institution, or approximately $514.40 per year.[27] [28] The estimated reduction in recordkeeping, reporting, or disclosure costs per institution represents less than 0.01 percent of non-interest expenses, on average, for small, FDIC-supervised institution.[29] Thus, the FDIC believes the proposed rule would not have a significant economic impact on small, FDIC-supervised institutions.

[27] 8 hours * $64.30 per hour = $514.40.

[28] The estimated reduction in costs is calculated by multiplying 8 hours by an estimated total hourly compensation rate of $64.30 per hour. According to the May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector the 75th percentile wages for a compliance officer is $40.55 per hour. The wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the March 2018 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 35.5 percent of total compensation. The wage is also inflation adjusted according to the BLS data on the Consumer Price Index for Urban Consumers (CPI-U) so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 2.28 percent between May 2017 and June 2018. Therefore, the adjusted average wage for a compliance officer is $64.30 per hour.

[29] Call Report, June 30, 2018.

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

SEC

Pursuant to 5 U.S.C. section 605(b), the SEC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

As discussed in the **Supplementary Information**, the Agencies are proposing to revise the 2013 final rule in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term "banking entity" to exclude certain community banks and their affiliates and (b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The proposed revisions would generally apply to banking entities, including certain SEC-registered entities. These entities include bank-affiliated SEC-registered broker-dealers, investment advisers, security-based swap dealers, and major security-based swap participants. Based on information in filings submitted by these entities, the SEC preliminarily believes that there are no banking entity registered investment advisers,[30] broker-dealers[31] security-based

[30] For the purposes of an SEC rulemaking in connection with the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than

swap dealers, or major security-based swap participants that are small entities for purposes of the RFA.[32] For this reason, the SEC believes that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

The SEC encourages written comments regarding this certification. Specifically, the SEC solicits comment as to whether the proposed amendments could have an impact on small entities that has not been considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

$25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. *See* 17 CFR 275.0-7.

[31] For the purposes of an SEC rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d), or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. See 17 CFR 240.0-10(c). Under the standards adopted by the SBA, small entities also include entities engaged in financial investments and related activities with $38.5 million or less in annual receipts. *See* 13 CFR 121.201 (Subsector 523).

[32] Based on SEC analysis of Form ADV data, the SEC preliminarily believes that there are not a substantial number of registered investment advisers affected by the proposed amendments that would qualify as small entities under RFA. Based on SEC analysis of broker-dealer FOCUS filings and NIC relationship data, the SEC preliminarily believes that there are no SEC-registered broker-dealers affected by the proposed amendments that would qualify as small entities under RFA. With respect to security-based swap dealers and major security-based swap participants, based on feedback from market participants and information about the security-based swap markets, the Commission believes that the types of entities that would engage in more than a de minimis amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be "small entities" for purposes of the RFA. See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 81 FR 53546, 53553 (Aug. 12, 2016).

CFTC

Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

As discussed in this **Supplementary Information**, the Agencies are proposing to revise the 2013 final rule in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term "banking entity" to exclude certain community banks and their affiliates and (b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The proposed revisions would generally apply to banking entities, including certain CFTC-registered entities. These entities include bank-affiliated CFTC-registered swap dealers, futures commission merchants, commodity trading advisors and commodity pool operators.[33] The CFTC has previously determined that swap dealers, futures commission merchants and commodity pool operators are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.[34] As for commodity trading advisors, the CFTC has found it appropriate to consider whether such registrants should be deemed small

[33] The proposed revisions may also apply to other types of CFTC registrants that are banking entities, such as introducing brokers, but the CFTC believes it is unlikely that such other registrants will have significant activities that would implicate the proposed revisions. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

[34] *See* Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

entities for purposes of the RFA on a case-by-case basis, in the context of the particular regulation at issue.[35]

In the context of the proposed revisions to the 2013 final rule, the CFTC believes it is unlikely that a substantial number of the commodity trading advisors that are potentially affected are small entities for purposes of the RFA. In this regard, the CFTC notes that only commodity trading advisors that are registered with the CFTC are covered by the 2013 final rule, and generally those that are registered have larger businesses. Similarly, the 2013 final rule applies to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses. The CFTC requests that commenters address in particular whether any of these commodity trading advisors, or other CFTC registrants covered by the proposed revisions to the 2013 final rule, are small entities for purposes of the RFA.

Because the CFTC believes that there are not a substantial number of registered, banking entity-affiliated commodity trading advisors that are small entities for purposes of the RFA, and the other CFTC registrants that may be affected by the proposed revisions have been determined not to be small entities, the CFTC believes that the proposed revisions to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

The CFTC encourages written comments regarding this certification. Specifically, the CFTC solicits comment as to whether the proposed amendments could have a direct impact on small entities that were not considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

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[35] *See* Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[36] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider any administrative burdens that such regulation would place on insured depository institutions and the benefits of such regulation. In addition, section 302(b) of RCDRIA requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions.

The proposed rule would reduce burden and would not impose any reporting, disclosure, or other new requirements on insured depository institutions. Accordingly, the Agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date.[37] Because delaying the effective date of the rule is not required and would serve no purpose, the Agencies propose to make the threshold increase effective on the first day after publication of the final rule in the Federal Register. The Agencies invite any comments that would inform the Agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state,

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[36] 12 U.S.C. 4802(a).

[37] Additionally, the 30-day delayed effective date requirement under the Administrative Procedure Act is not applicable to a rule, such as the one proposed herein, that grants or recognizes an exemption or relieves a burden. 5 U.S.C. 553(d)(1).

local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

F. SEC: Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[38] the SEC requests comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

G. SEC Economic Analysis

[SEC economic analysis to be inserted upon approval by the SEC.]

List of Subjects

12 CFR Part 44

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

12 CFR Part 248

[38] Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

Administrative practice and procedure, Banks, banking, Conflict of interests, Credit, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Securities, State nonmember banks, State savings associations, Trusts and trustees.

12 CFR Part 351

Banks, banking, Capital, Compensation, Conflicts of interest, Credit, Derivatives, Government securities, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

17 CFR Part 75

Banks, Banking, Compensation, Credit, Derivatives, Federal branches and agencies, Federal savings associations, Government securities, Hedge funds, Insurance, Investments, National banks, Penalties, Proprietary trading, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Swap dealers, Trusts and trustees, Volcker rule.

17 CFR Part 255

Banks, Brokers, Dealers, Investment advisers, Recordkeeping, Reporting, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

PART 44 PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 1. The authority citation for part 44 continues to read as follows:

Authority: 7 U.S.C. 27 et seq., 12 U.S.C. 1, 24, 92a, 93a, 161, 1461, 1462a, 1463, 1464, 1467a, 1813(q), 1818, 1851, 3101 3102, 3108, 5412.

■ 2. In subpart A, § 44.1 is amended by revising paragraph (c) to read as follows:

§ 44.1 Authority, purpose, scope, and relationship to other authorities.

* * * * *

(c) *Scope*. This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the OCC is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include national banks, Federal branches and Federal agencies of foreign banks, Federal savings associations, Federal savings banks, and any of their respective subsidiaries (except a subsidiary for which there is a different primary financial regulatory agency, as that term is defined in this part), but do not include such entities to the extent they are not within the definition of banking entity in section 44.2(c) of this subpart.

* * * * *

■ 3. In subpart A, § 44.2 is amended by revising paragraph (r) to read as follows:

§ 44.2 Definitions

* * * * *

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) An insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) An insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C — Covered Funds Activities and Investments

■ 4. In subpart C, § 44.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 44.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 44.11(a)(6).

* * * * *

■ 5. In subpart C, § 44.11 is amended by revising paragraph (a) to read as follows:

§ 44.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) (A) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(*1*) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(*2*) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word "bank" in its name.

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 248—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS (Regulation VV)

■ [XX]. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1851, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* and 12 U.S.C. 3103 *et seq.*

Subpart A — Authority and Definitions

■ [XX]. In subpart A, section 248.1 is amended by revising paragraph (c) as follows:

§ 248.1 Authority, purpose, scope, and relationship to other authorities

* * * * *

(c) *Scope*. This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the Board is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include any state bank that is a member of the Federal Reserve System, any company that controls an insured depository institution (including a bank holding company and savings and loan holding company), any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act (12 U.S.C. 3106), and any subsidiary of the foregoing other than a subsidiary for which the OCC, FDIC, CFTC, or SEC is the primary financial regulatory agency (as defined in section 2(12) of the Dodd-Frank

Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5301(12)), but do not include such entities to the extent they are not within the definition of banking entity in section 248.2(c) of this subpart.

* * * * *

■ [XX]. In subpart A, Section 248.2 is amended by revising paragraph (r) as follows:

§ 248.2 Definitions

* * * * *

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C — Covered Funds Activities and Investments

■ [XX]. In subpart C, section 248.10 is amended by revising paragraph (d)(9)(iii) as follows:

§ 248.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 248.11(a)(6).

* * * * *

■ [XX]. In subpart C, section 248.11 is amended by revising paragraph (a) as follows:

§ 248.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) (A) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(*1*) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(*2*) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word “bank” in its name.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 351 — PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ [XX]. The authority citation for Part 351 continues to read as follows:

Authority: 12 U.S.C. 1851; 1811 et seq.; 3101 et seq.; and 5412.

Subpart A — Authority and Definitions

■ [XX]. In Subpart A, section 351.1 is amended by revising paragraph (c) as follows:

§ 351.1 Authority, purpose, scope and relationship to other authorities.

*****

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to insured depository institutions for which the FDIC is the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, and certain subsidiaries of the foregoing, but does not include such entities to the extent they are not within the definition of banking entity in section 351.2(c) of this subpart.

*****

■ [XX]. In subpart A, section 351.2 is amended by revising paragraph (r) as follows:

§ 351.2 Definitions

*****

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

*****

Subpart C – Covered Funds Activities and Investments

■ [XX]. In subpart C, section 351.10 is amended by revising paragraph (d)(9)(iii) as follows:

§ 351.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

*****

(d) ***

(9) ***

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 351.11(a)(6).

*****

■ [XX]. In subpart C, section 351.11 is amended by revising paragraph (a) as follows:

§ 351.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

(a) ***

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i)(A) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(1) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(2) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word "bank" in its name.

*****

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission proposes to amend Part 255 to chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 255 PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ [XX].

The authority for part 255 continues to read as follows:

Authority: 12 U.S.C. 1851

Subpart A — Authority and Definitions

■ [XX]. In Subpart A, section 255.1 is amended by revising paragraph (c) as follows:

§ 255.1 Authority, purpose, scope and relationship to other authorities.

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the SEC is the primary financial regulatory agency, as defined in this part, but does not include such entities to the extent they are not within the definition of banking entity in section 255.2(c) of this subpart.

* * * * *

■ [XX]. In subpart A, Section 255.2 is amended by revising paragraph (r) as follows:

§ 255.2 Definitions

* * * * *

(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C — Covered Funds Activities and Investments

■ [XX]. In subpart C, section 255.10 is amended by revising paragraph (d)(9)(iii) as follows:

§ 255.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 255.11(a)(6).

* * * * *

■ [XX]. In subpart C, section 255.11 is amended by revising paragraph (a) as follows:

§ 255.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) (A) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(*1*) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(*2*) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word "bank" in its name.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Authority and Issuance

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission amends Part 75 to chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 75 — PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ [XX]. The authority citation for Part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

■ [XX]. In Subpart A, section 75.1 is amended by revising paragraph (c) as follows:

§ 75.1 Authority, purpose, scope and relationship to other authorities.

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(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the CFTC is the primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Act, but does not include such entities to the extent they are not within the definition of banking entity in section 75.2(c) of this subpart.

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■ [XX]. In subpart A, section 75.2 is amended by revising paragraph (r) as follows:

§ 75.2 Definitions

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(r) *Insured depository institution*, unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

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Subpart C – Covered Funds Activities and Investments

■ [XX]. In subpart C, section 75.10 is amended by revising paragraph (d)(9)(iii) as follows:

§ 75.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

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(d) ***

(9) ***

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under section 75.11(a)(6).

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■ [XX]. In subpart C, section 75.11 is amended by revising paragraph (a) as follows:

§ 75.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

(a) ***

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i)(A) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(1) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(2) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word "bank" in its name.

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