Public Comments in Response to OCC Notice Seeking Input on the Volcker Rule: Detailed Summary of Key Issues and Recommendations

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This document provides a detailed summary of key issues and recommendations from comment letters the OCC received in response to its notice seeking input on the Volcker Rule. OCC staff prepared this summary based on public comment letters that are available on regulations.gov. This document is a staff summary of the substantive comments received and does not reflect the views of the OCC.

The OCC received 87 unique comment letters and over 8,400 standardized letters from a variety of commenters, including banks, industry trade associations, investment funds, research and advocacy organizations, a foreign regulator (Japan's Financial Services Agency/Bank of Japan), consumer groups, and individuals. In addition, the OCC was copied on a letter from Senators Brown and Merkley to the Treasury Department. The letter concerned the OCC's notice seeking input and has been included in this summary. We have used abbreviations for commenter names in the summary. The abbreviations along with respective commenter names are included in a legend at the end of this document.

Banks, trade associations, investment funds, and the foreign regulator overwhelmingly favored amending the rule to narrow its scope and application, minimize its complexities, and reduce compliance burden. Consumer groups, a state bank, and individual commenters strongly opposed changes to the Volcker Rule on the grounds that the rule is necessary to protect taxpayers from another financial crisis. Many of those commenters also argued that there is no justification for changing the rule at this time because it has not had negative effects on bank profits, market liquidity, or economic prosperity. Research and advocacy organizations were divided in their support for amending the Volcker Rule. The last section of the document summarizes comments that supported maintaining or strengthening the Volcker Rule's requirements. Those comments also are included as "Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements" in other sections of the summary.

SCOPE OF THE RULE

The Volcker Rule is Overbroad

- Regional banks engage in few of the trading activities that the Volcker Rule was designed to address and the Agencies should mitigate the undue burden placed upon them. *Regional Banks at 3*
- The Volcker statute was originally aimed at restricting the kind of activities that only the largest banks on Wall Street engaged in (citing statements by Paul Volcker). *CEI at 2*
- Volcker was intended to prevent excessive risk taking that could destabilize the financial markets, yet it applies to all banking entities, regardless of size or business model. *FSR at 1*
    - Specific examples of unintended consequences and supporting data regarding the burdensome impact of certain aspects of Volcker and how it impairs safety and

soundness is difficult to share in a public comment. But, many of our members expressed strong willingness to share such non-public data and specific examples through the supervisory/examination process. *FSR at 4*

- Volcker has an expansive extraterritorial outreach, well beyond what is necessary to accomplish its statutory purpose. *CS Prop at 3*
- Current Volcker regulations are contrary to the intent of the statute because they do not adequately distinguish between traditional banking businesses and speculative activity. *TCH at 5-6, 8*
- Investors have declined to expand their investments in the parent of an industrial loan company, because they are concerned about becoming subject to Volcker. *EnerBank at 2*
- Volcker is too broad as evidenced by the foreign excluded funds issue (and the regulatory relief provided on 7/21/17). *EBF at 1-2*
- Volcker was never meant to apply to RICs and similar funds organized outside the U.S., but such funds have been affected. *ICI at 1*
- Volcker was not meant to cover a community bank writing covered call options on grandfathered equity investments. *NSB at 1-2*
- Volcker has caused banks to stop making loans to residential and commercial real estate developers. *Del Duca*
- Agencies should conduct a rigorous economic analysis of Volcker and the cumulative impact assessment of major regulatory initiatives undertaken since the financial crisis. Such analysis is/was required by law and would provide info to Congress as they consider repeal or amendment of the Volcker statute. *Chamber at 8 – 10*

Exempt Entities below Certain Asset Thresholds

Exempt Entities with $10 Billion or Less in Assets

- Exempt community banks with less than $10 billion in assets. *NSB at 2, PCI at 1, Chatham at 3*
- Exempt all community banks from the Volcker Rule; community banks do not engage in the type of activities the rule was designed to address and that the regulatory burden falls hardest on community banks. *CBA-Ill at 2*
- At a minimum, exempt banking entities with total assets of $10 billion or fewer or trading assets of $ 1 billion or fewer. Further narrow Volcker by aligning its application with the designation of systemically important financial institutions. *CEI at 7-8*
    - Small banks benefit from proprietary trading and are more likely to use trading for hedging purposes, as opposed to making speculative bets. Small banks benefit from hedging more than large banks. Volcker discourages small banks from hedging using derivatives. *CEI at 4-7*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
    - Do not provide further relief from Volcker for banking entities with $10 billion or less in assets. Such entities are already subject to a simplified compliance program. *Better Markets at 13*
    - Do not exempt community banks. Community banks do not generally engage in proprietary trading, so exempting them provides no benefit. *BSB at 1*
    - Eliminating community banks from the scope of the Volcker Rule is not warranted. While community banks have not generally engaged in risky trading activities,

completely exempting them from the scope of Volcker would permit a larger bank to evade proprietary trading restrictions by routing such activities through small, ostensibly separate community banks. In any case, the OCC has no authority to exempt small banks from the scope of the Volcker Rule. *OSEC at 2-3*
    - Volcker already provides a tiered compliance regime that tailors the Rule's requirements to the size, complexity, and type of activity conducted by each banking entity. No further relief is necessary based on the tenuous and unsupported assertions from industry, set forth in the RFI, that merely determining which regime applies is an undue burden for smaller banks. *Better Markets at 13*

Exempt Entities Based on Other Size Considerations

- Exclude smaller banking organizations from the scope of Volcker. The threshold for such an exemption should be applied to international banks based on their U.S. assets and operations, thereby exempting international banks with limited assets or proprietary trading operations in the United States. *IIB at 7, CITIC Group at 2*
- Exempt all institutions with assets less than $50 billion. *ICBA at 3*
- Apply the regulation's requirements only to those banking entities that meet the prevailing systemic risk standard, as defined by the Agencies under the regulation (e.g., by institution, products, or practices), refined by regulatory interpretation as necessary and appropriate. *ABA at 4*
- Permit all other banking entities to demonstrate compliance with the statute through the normal supervisory and examination process. *ABA at 4*
- Exempt institutions that score below a certain threshold based on "size," "complexity," and interconnectedness." Low scores suggest an institution is incapable of destabilizing the market due to excessive risk-taking. *FSR at 1*

Exempt Entities with Limited Trading Activities

Exempt Entities with Trading Assets Less than $1 Billion

- Using Section 13(d)(1)(J) authority, exempt from proprietary trading prohibition entities that have market risk trading assets and liabilities each of which is less than the greater of $1 billion or 5% of total consolidated assets. *MBCA at 3*
- Exempt banking entities with total assets of $10 billion or fewer or trading assets of $1 billion or fewer. Alternatively, apply the rule only to banks with significant proprietary trading activities or assets of $500 billion or more. *CEI at 7-8*

Exempt Entities with Limited Trading Activities

- Banking entities that engage primarily in traditional banking activities and do not engage in significant trading activities should not be subject to Volcker's proprietary trading restrictions, regardless of asset size. *Huntington at 2*
- Banking entities that are not subject to the Market Risk Capital Rule should not be subject to the proprietary trading prohibitions of Volcker. *Huntington at 2, Chatham at 3*
- Exempt from proprietary trading restrictions banking entities with $10 billion or less in trading assets and liabilities. Any risks posed by such entities could be more efficiently addressed through capital requirements and prudential supervision. *Huntington at 2, Chatham at 3*

- Exclude entities with trading exposures that are small relative to their capital and with trading revenues that are small relative to total revenues. *BOKF at 4-5*
- Limit applicability of Volcker to firms with complex trading businesses. *CRE Assoc at 1*
- Exclude entities that use financial instruments solely in activities that bear no price risk or that reduce price risk to non-trading assets. *BOKF at 4-5*
- Exclude any depository institution holding company whose proprietary trading activities amount to less than 10% of its trading portfolio. Also exclude any trading activities whose purpose is other than to reap short-term investment gains. *PCI at 1*

The Volcker Rule has not Reduced Risk

- Proprietary trading did not cause the financial crisis. Lending is inherently risky, diversifying revenue helps limit risk, and trading restrictions reduce US competitiveness. *AAF at 1-4*
- Proprietary trading did not cause the financial crisis, standalone institutions were more likely to fail, and lending, rather than trading, caused the financial crisis. *CEI at 2-4, 8-9*
- Volcker has not reduced risk because banks have shifted risk from trading to lending activities. A number of sources indicate that Volcker has had, at most, a minor effect on risk taking by large commercial banks. *CEI at 9-11*
- Volcker has not reduced moral hazard; scale back deposit insurance instead. *CEI at 11-13*

Narrow the Definition of Banking Entity

Narrow the Definition of "Affiliate" and/or "subsidiary" to Exclude Entities that a Banking Entity has Limited or No Practical Ability to Control

- Use US GAAP/IFRS consolidation approach and only include entities where the top tier banking entity actually has the ability to control and to benefit from their trading. This approach would exclude off-balance sheet variable interest entities and funds where the top tier banking entity has no real control or profit opportunity. *ISDA at 11-12*
- Exclude entities that a banking entity has limited or no practical ability to direct or control and, thus, allow banking entities to continue to make investments and establish relationships that are important from a strategic or risk management perspective (e.g., joint ventures or minority investments that are not required to be consolidated on a banking entity's financial statements under GAAP). *TCH at 21*
- BHC Act's definition of control for purposes of defining an affiliate is too broad. Narrowing the definition of control is consistent with how the Federal Reserve has treated a financial holding company's investments in portfolio companies under its merchant banking authority. *TCH at 21-22*
- Exclude from the definition of banking entity those entities that a true banking entity has no practical ability to direct or control, as well as sponsored mutual funds and non-covered funds. *Regional Banks at 19*
- Exclude non-consolidated companies whose activities are not managed or operated by a banking entity, consistent with the merchant banking rule prohibition on engaging in routine operation or management of a portfolio company. *SIFMA at 45-46*
- Exclude from the definition of banking entity those entities that are not or would not be consolidated with, or actively managed or operated by a banking entity. It is inconsistent to exclude merchant banking portfolio companies while including companies that are not operationally controlled by a banking entity. A desire to avoid a "banking entity" designation

incentivizes banks to divest from or improperly restrict portfolio companies over which they have no control. *TIAA at 2-3*

- Adopt a clear and easy-to-apply definition of "control" (e.g., a 25% bright line). *Regional Banks at 19-20*

Exclude Registered Investment Companies (RICs)

- Exclude all RICs from the definition of banking entity (a RIC is a banking entity if a bank controls more than 25% of the voting shares of the RIC after the seeding period ends). Extend the seeding period for RICs (1 year, extendable to 3 years)). *IAA at 2-4*
- Exclude all RICs from the definition of banking entity. *Regional Banks at 20, IIB at 8*
- Exclude RICs from definition of banking entity. The seeding stage of such funds is a particular problem: the current seeding period is insufficient. This would address seeding of third-party RICs and end of life issues (e.g., if an advisor holds a greater than 25% interest in a RIC as other investors redeem shares during RIC liquidation). *ICI at 2, 3-8*

Limit Extraterritorial Application

- Limit the scope of banking entities to entities organized or domiciled in the U.S. in cases where the entities are in the form of a corporation. Alternatively, the definition should be amended to include only those non-U.S. entities that meet clearly specified criteria. *JBA at 2*
- Revise the definition of banking entity to only include (i) the operations of U.S. domiciled bank holding companies and their subsidiaries, and (ii) the operations of Intermediate Holding Companies of Foreign Banking Organizations and their subsidiaries. *BMO at 2*

Miscellaneous

- Exclude from Volcker Industrial Loan Company parents (but not ILCs) that are not predominantly engaged in financial activities. *EnerBank at 2, 4*
- Exclude from the definition of banking entity funds that are organized and offered pursuant to another exclusion from the definition of covered fund (e.g., foreign public funds, loan securitizations, employees' securities companies, etc.). *IIB at 8*
- Exclude entities established for customer facilitation purposes from the definition of banking entity. Certain types of customer facilitation vehicles qualify for exclusions from the definition of covered fund, and therefore do not qualify for the exclusion from the definition of banking entity for covered funds. *TCH at 23*
- Exclude public welfare investment entities from the definition of banking entity. *TCH at 23*
- Exclude "funds-of-one" (a fund with one investor managed by a non-bank manager) from the definition of wholly-owned subsidiary where the fund is advised and sponsored by a non-bank manager. This would solve the issue of funds-of-one falling under the definition of banking entity because they are not covered funds by virtue of satisfying the wholly-owned subsidiary exclusion from the definition of covered fund. *Simpson Thatcher at 2, 5-6*
- Volcker is a prudential regulation that applies to large bank holding companies and all their affiliates, whether a bank or broker-dealer. Any reforms to Volcker should not impose restrictions on bank affiliates that would not apply to other affiliates of the bank holding company. *FSR at 12*

Foreign Non-Covered Funds (Exclude from Definition of Banking Entity)

- Exclude from the definition of banking entity non-consolidated, minority-owned, and operationally non-controlled non-U.S. companies of an international bank that are currently subject to Volcker unless they have Volcker Rule-triggering banking operations within the U.S. *IIB at 7*
- Exclude from the definition of banking entity controlled, bona fide investment funds (pooled investment vehicles and managed accounts) that are excluded from the definition of covered fund because they are organized and offered outside of the U.S. *IIB at 8*
- Exclude non-U.S. commercial investee companies (i.e., companies that banking entities have chosen to invest in) comparable to U.S. merchant banking portfolio companies from the definition of banking entity. *IIB at 7*
- Exclude foreign public funds from the definition of banking entity. *ICI at 2, 3-8*
- Exclude from banking entity definition foreign funds not owned or controlled by a foreign affiliate of a foreign bank with U.S. operations. *Japan at 2*
- Exclude Qualifying Foreign Excluded Funds (QFEF) as defined in the 7/21/17 interpretive relief, with certain modifications. Foreign excluded funds are not covered funds with respect to a foreign banking entity. However, if a foreign bank controls such a fund, the fund may be a banking entity subject to the rule. Interpretive relief defined QFEF to mean a fund (1) organized and offered outside the US (2) that would be a covered fund if it were established in the US (3) that would not be a banking entity but for the foreign bank's ownership interest in or sponsorship of the fund (4) that is established and operated as part of a bona fide asset management business and (5) is not operated to evade the Volcker Rule. *EBF* at 3-5, 10
- Exclude foreign funds from the definition of banking entity. Codify the 7/21/17 no-action relief. *Japan at 2, AIC at 3-5.* Exclude all foreign funds – both public and private - from the definitions of covered fund and banking entity. Excluding such funds is consistent with the clear intent of Congress to limit the extraterritorial application of Volcker. *EFAMA at 2-3*
- Revise the definition of banking entity to provide relief for foreign excluded funds and other private funds that are not covered funds. *SIFMA at 43-45, BMO at 3-4, CBA at 2, TIAA at 2*
- Clarify that a fund owned by a non-U.S. banking entity that is organized and offered exclusively outside of the U.S. and that does not otherwise qualify as a covered fund is not deemed to be a banking entity by virtue of the non-U.S. banking entity's investment in or governance arrangements with the fund. *JBA at 3*
- Exclude all foreign private and public funds from the definition of covered fund and banking entity, regardless of the percentage of banking entity ownership. Codify the 7/21/17 no-action relief. *IAA at 2, 4-5*
- Revise the banking entity definition to cover investments in a foreign excluded fund made as part of any customer-facing business. Also, clarify that the definition covers funds controlled under all three prongs of the Board's control definition. Require investments in QFEFs to comply with SOTUS. *EBF at 3-5, 10*
- Adopt a new qualifying foreign excluded funds definition and exclude QFEFs from the definition of banking entity. The definition for QFEF would be based on the 7/21/17 interpretive relief. Clarify that a fund is a QFEF if it is controlled under any of the control prongs under the BHC act (as opposed to only under ownership/sponsorship) and that third-party funds can be QFEFs. *CS Fund at 2, 9-10*

- Exclude QFEFs from the definition of banking entity. QFEF would be defined as in the 7/21/17 guidance but with two clarifications: (1) "investor" may mean a foreign bank and (2) "bona fide asset management business" may refer to a bank-sponsored or non-bank-sponsored asset management business. *Simpson Thatcher at 2, 5-6*

Generally Reduce Extraterritorial Application

- Volcker restrictions on proprietary trading should not extend to the activities engaged in by a non-U.S. bank through its branches and affiliates located outside the United States, given that these entities cannot avail themselves of FDIC deposit insurance or the Federal Reserve's discount window. *CS Prop at 3*
- Amend the Volcker regulation to apply only to the U.S. affiliates and branches of a non-U.S. banking organization. *CS Prop at 4*
- Narrow the scope of Volcker to be consistent with the scope of the CEO attestation, and only apply to the U.S. operations of non-U.S. banks, namely its entities organized in the U.S. as well as any U.S. branches. *CS Prop at 5*
- Exempt non-US affiliates of a foreign bank whose activities are mainly outside the U.S. (e.g., non-US affiliates that have fewer than 30% of their assets located in the U.S.). *CITIC Group at 2*
- Exempt foreign banks with fewer than $10 billion in consolidated US assets from Volcker (with respect to global activities). *CITIC Group at 2*
- Eliminate extraterritorial application of Volcker. *Japan at 1*
- Don't apply Volcker to subs that do not engage in any transactions that may be potentially harmful to the U.S. (e.g., an IT system affiliate). *Japan at 1*
- In the case of a joint investment between a non-U.S. bank and a U.S. bank, treat the joint investment solely as a subsidiary of the non-U.S. bank to reflect the limited risks the investment poses to the U.S. *JBA at 5*
- OCC should defer to host regulators of subsidiaries and affiliates of banking entities located outside the U.S. *JBA at 2*
- Reduce Volcker's extraterritorial reach to align with the historical approach of U.S. banking laws. Specifically, exempt all activities permitted under Regulation K from Volcker for non-U.S. banking entities. However, if the non-US banking entity engages in business or activities in the U.S. pursuant to and as defined under Regulation K, Volcker would apply to those activities. *EBF at 5, 7-9*
- Base extra-territorial reach of Volcker on traditional standards of national treatment. National treatment generally means that a country provides parity of treatment between domestic and foreign-owned firms, resulting in equality of competitive opportunity. *FSR at 12*

Suggested Uses of Section 13(d)(1)(J) to Narrow Volcker's Application

- The proprietary trading prohibition, including its so-called backstop provisions, should not apply to a banking entity as long as the amount of its market risk trading assets/liabilities in Volcker covered instruments is less than the greater of $1 billion or 5% of total consolidated assets.
    - For purposes of the $1 billion and 5% tests, assets and liabilities are to be considered separately and not combined. In many instances, trading liabilities under the Market Risk Capital Rule result from hedging trading assets, which is a beneficial activity for

risk management purposes. A banking entity with $500 million in market risk trading assets and $600 million in market risk trading liabilities in Volcker covered instruments would therefore be exempt from the proprietary trading prohibition.

  - "Volcker Rule covered instruments" include instruments to which the proprietary trading restrictions apply. Excluded for these purposes, therefore, would be the amount of any:
    - U.S. government and agency securities
    - Loans
    - Physical commodities
    - Spot foreign exchange.
  - This exemption would be consistent with the requirements of (d)(1)(J) that the exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States. The federal banking agencies have not required institutions that do not have more than $1 billion in market risk assets and liabilities to carry additional capital under the Market Risk Capital Rule because their trading activities do not raise substantial additional risks. A 5% standard is recognized as a *de minimis* standard consistent with safety and soundness in other areas of federal banking law, including §4(c)(6) of the BHC Act and OCC's interpretations on permissible commodity derivative hedging transactions. *MBCA at 3-4*

- Permitting all bona fide ALM activities is consistent with (d)(1)(J) which provides that the Agencies may exclude activities that promote the safety and soundness of a banking entity and U.S. financial stability. *TCH at 13*
- Using (d)(1)(J) authority, Agencies could exempt long-term investments in fund vehicles that do not engage in proprietary trading, which would foster economic growth, enable U.S. banking entities to be more competitive with foreign firms, and appropriately tailor the covered fund restrictions. *TCH at 17*
- Using (d)(1)(J) authority raise the *de minimis* threshold for permitted covered fund investments to 10%. *CITIC Group at 5*
- Using (d)(1)(J) authority create an appeal and review process for cases where a banking entity is unable to reduce its position below the *de minimis* threshold for permitted covered fund investments. *CITIC Group at 5*
- Permitting all bona fide ALM activities is consistent with (d)(1)(J) which provides that the Agencies may exclude activities that promote the safety and soundness of a banking entity and the U.S. financial stability. *TCH at 13*
- Using (d)(1)(J) authority, exempt cash collateral pools from the proprietary trading and covered fund prohibitions. Cash collateral pools meet the "safety and soundness" prong because securities lending and its ancillary services are core banking activities at agent banks and provide a significant source of revenue for lenders. The "financial stability" prong is satisfied because securities lending improves market liquidity by effectively increasing the supply of securities available for market-making, trade settlement and other market activities, and potentially increases market efficiency by reducing the cost of trading. *RMA at 12-14*

PROPRIETARY TRADING

Proprietary Trading Prohibition has Hurt Market Liquidity

- Reduced Participation in U.S. Markets by Non-U.S. Entities. 140 foreign banks from 47 different countries are currently subject to Volcker, despite very limited U.S. operations. This has disrupted international banks' ability to trade with U.S. counterparties and trade through U.S. trading and clearing venues; it has hurt the U.S. companies that are customers and counterparties of international banks; it has discouraged new entrants into the U.S. banking system; and it has generally negatively affected overall market liquidity. In 2015, international bank assets in the U.S. decreased by over $500 billion, largely due to Dodd-Frank implementation. Over 20 international banks have exited the U.S. since the passage of Dodd-Frank, either by closing their U.S. operations entirely or by downgrading their U.S. operations to representative offices. *IIB at 2*
- CMBS Markets.
  - There is ample anecdotal evidence that Volcker has had significant adverse impacts on CMBS market making. For example, MBA members report that banks have curtailed market-making activity. They also report reducing the amount of balance sheet devoted to market making, resulting in a corresponding reduction in inventory of CMBS available for market making. This impairs CMBS liquidity, increases the risk of CMBS market volatility in the event of an adverse market conditions and has adverse impacts on market flow. *MBA at 3*
  - CREFC provides a number of data series suggesting that certain liquidity dimensions related to the secondary CMBS market have deteriorated since 2014. (CREFC pp. 3-8).
- Volcker has hurt market liquidity and main street businesses because it is very difficult to distinguish market-making from proprietary trading.
  - Provides data estimating funding cost impact to borrowers if Volcker widens bid-ask spreads; cites September 2016 Federal Reserve study finding a reduction in bond liquidity; cites September 2016 CFA Institute survey of members on bond market liquidity trends and the Chamber's own survey of corporate treasurers and CFOs. *Chamber at 4-8, Appendix*
- Volcker has hurt liquidity for illiquid, immature, or shallow markets (*e.g.*, military housing bonds or the market for aircraft equipment securities). Market-making exemption was designed for well-established markets, like public equities. *Stifel at 2*
- Volcker has hurt liquidity (generally). *FSR at 7*
- Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements:
  - Volcker has not harmed liquidity, as proved by the SEC's Congressionally-mandated staff report. *Senators at 3, CAP at 2*
  - Volcker has not hampered useful market liquidity. *OSEC at 3-4, Public Citizen at 3-4, Better Markets at 7-10*

Proprietary Trading Prohibition has Inhibited Traditional Bank Activities

- Current regulations disadvantage foreign exchange dealers from effectively conducting market making, risk mitigating hedging, and ALM activities, which are essential to maintaining the strong liquidity in the global foreign exchange markets. *State Street at 3*

- Volcker has resulted in foregone business prospects, including decline in market-making (curtails lawful market-making, inhibits ALM activities, and inhibits management of IR and FX risk). *ABA at 2-3*
- Customers rely on banking entities to provide them securities through securities lending or repo transactions. Recognizing the importance of this function, the Volcker Agencies exclude securities lending and repo from the definition of proprietary trading. The exclusion, however, does not apply to sourcing the securities that are provided to customers as part of these activities, frequently making it impossible for banking entities to serve client needs in hard-to-borrow securities. *SIFMA at 13*

Definition of Proprietary Trading/Trading Account

Eliminate the Purpose Test

- Eliminate the first prong of the trading account definition (the purpose test) because determining the subjective intent associated with each trade imposes a significant compliance burden. *Huntington at 2, Chatham at 3, MCBA at 5*
- Revise the trading account definition to eliminate the purpose test. *ISDA at 9*
- Eliminate the purpose test, because the market risk capital rule test and the dealer status test should be sufficient to determine whether an account is deemed as a trading account. *JBA at 8*
- Eliminate the purpose test and instead consider whether the following are non-zero: (i) net position (long v. short), (ii) net risk equivalent position, and (iii) stress test exposure. *BOKF at 6-7*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
    - Preserve purpose prong of "trading account" definition. Changes to the purpose test are not warranted; bankers clearly understand the intent behind their trades. *Better Markets at 14*

Narrow the Definition of Trading Account

- Narrow the trading account definition to focus on Volcker's core purpose of prohibiting short-term standalone proprietary trading. *State Street, at 3, ABA at 4*
- Exclude from the trading account definition any trading activities whose purpose is other than to reap short-term investment gains. *PCI at 1*
- Focus on speculative, short-term standalone proprietary trading. Revise the "trading account" definition to capture trading in any financial instrument by a segregated or operationally distinct business unit that is mandated to generate profits from short-term price movements or short-term trading strategies that is unrelated to the banking entity's financial intermediation, risk management, asset-liability management or banking book investment activity. *SIFMA at 13, CREFC at 14, IAA at 1, FSR at 2*
- Apply the proprietary trading prohibition only to a business unit that is separately operated primarily for the purpose of buying and selling, as principal, financial instruments to generate profits from short-term price movements or other similar trading strategies -- that is, a specific business unit or desk that is allocated firm capital for the purpose of engaging in trading on a proprietary basis, not as a market maker, in order to earn a return on that capital. *ISDA at 2*

- Exclude financial intermediation, risk management, and ALM activities from the proprietary trading definition. *ABA at 4*
- Revise the trading account definition to focus on short-term standalone proprietary trading and to reflect that banking entities' ALM activities and risk management in connection with core commercial banking-related activities do not involve acting principally for the purpose of short-term trading. *TCH at 11, A-2*
- Adopt a two prong approach: (1) exclude from the definition of proprietary trading client-facing activities and related hedging and internal hedging and cash management activities, **and** (2) use existing regulatory limits (capital, liquidity and traditional risk metrics) to monitor whether such activity is consistent with Volcker. *CS Prop at 8*

Eliminate Dealer Status Test

- Eliminate the dealer status test under the trading account definition because it is too broad. *TCH at 11, MBCA at 5*
- Dealer status test is too broad because it is unclear whether certain long-term investments held by dealers are captured by the test. It also captures stock that a dealer is required to own as a member of an exchange or central counterparty, which is clearly inconsistent with the statute's intent. *SIFMA at 4, 11*
- Narrow the dealer status test to make clear that long term investments by a dealer as a member in the NSYE, penny-for-a-lot accounts, and error accounts, do not trigger the dealer test. *FSR at 2-3*

Market Risk Capital Rule Test is Sufficient

- Market Risk Capital Rule test is sufficient to regulate proprietary trading activities. *MBCA at 5, JBA at 8* (test is sufficient because it regulates excessive risk and covers the trading accounts defined under the Basel framework)
- Banking entities that are not subject to the Market Risk Capital Rule should not be subject to Volcker's proprietary trading prohibitions. *Huntington at 2*

Revise the Rebuttable Presumption

Eliminate the Rebuttable Presumption that Financial Positions Held for Fewer than 60 Days Constitute Proprietary Trading

- Eliminate the rebuttable presumption. *MBCA at 6* (and stop enforcing against certain activities caught in rebuttable presumption until eliminated)*; Stifel at 5, CS Prop at 9, TCH at 11, SIFMA at 10, ABA at 5, State Street at 4, BMO at 4, FSR at 2*
- Rebuttal has pulled a variety of transactions into the Volcker Rule that are not proprietary trading:
    - Banking entities frequently hedge their loan books with financial instruments that may be subject to Volcker. These hedges unnecessarily subject lending functions to the burdensome compliance requirements. *SIFMA at 14*
    - Since the trading account definition does not exclude error transactions, selling error positions quickly paradoxically increases Volcker scrutiny and burden and encourages long-term holding of error positions. This problem is compounded where the *bona fide* error relates to an acquisition of a covered fund interest, for which no clear authority is available. *SIFMA at 14*

- Requires entities to track positions that may be hedged on an aggregated basis by another business unit in the normal course of operations to determine if the presumption is triggered. *SIFMA at 11*

- Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements:
  - Do not eliminate the rebuttable presumption. Banking entities always have the opportunity to demonstrate that they did not enter transactions that trigger the presumption for short-term trading purposes. *Better Markets at 14*
  - Strengthen the presumption and lengthen the presumption period for less liquid asset classes. Vary the definition of "short-term" by asset class. The 60 day presumption should continue to exist for moderately liquid securities, such as equities traded on minor exchanges. Relatively illiquid securities such as bonds, and especially derivatives, should be assigned a longer window of presumption, such as 90 or 120 days. Further, the resale of highly liquid securities, such as equities traded on major exchanges, within a 60 day timeframe should be considered prop trading per se with no possibility of rebuttal. *OSEC at 5*

Reverse the Rebuttable Presumption

- Transactions in which financial instruments are held for more than sixty days or the risk of the financial instrument are transferred after sixty days of the purchase (or sale) should be presumed not to be for the trading account ("Reverse Presumption"). *JBA at 9, Huntington at 2, ISDA at 9, IIB at 7, TCH at 11; State Street at 4, Regional Banks at 7, PCI at 1, ABA at 5, FSR at 10*
- Exclude positions that are recognized as non-trading positions under established classification regimes and treated as such for other regulatory purposes, including (1) securities positions classified as "available-for-sale" or "held-to-maturity" under U.S. generally accepted accounting principles ("GAAP"); (2) derivative positions that are designed as accounting hedges under Standard ASC 815, *Derivatives and Hedging*, of the Financial Accounting Standards Board; and (3) securities and derivative positions that are in the banking book for regulatory capital purposes. *TCH at 11, Regional Banks at 7-8, ABA at 5, FSR at 2*
- Create reverse presumption that trades reducing risk on non-trading assets and matched book trades are not proprietary trading; qualifying for the risk mitigating hedge exemption may be too burdensome (e.g., dynamically hedging mortgage servicing assets). *BOKF, at 2-3* (provided chart showing impact of not being able to hedge dynamically)
- Provide a safe harbor for long-term investing activities that include "available-for-sale" and "held-to-maturity" positions. *State Street at 4*

Provide Guidance on Rebutting the Presumption

- SIFMA members understand that the Volcker Agencies currently interpret the Rebuttable Presumption as a bright-line test, rather than as a presumption. *SIFMA at 12*
- If rebuttable presumption is retained, entertain rebuttals, subject to certain documentation requirements. *BOKF at 7*
- Provide guidance on whether an institution (1) may rebut the presumption for any given transaction, (2) may rebut the presumption for a group of related transactions, (3) may develop and rely on rebuttal procedures, and (4) must submit each rebuttal to an Agency for review. *Regional Banks at 5-6*

- Clarify that an institution can rebut the presumption, whether for certain types of transactions or otherwise as long as the banking entity can justify how the activity meets the conditions. *CS Prop at 9*
- Provide specific guidance that could allow simplified rebuttal procedures for financial instruments held for fewer than 60 days. *JBA at 9*
- Provide additional guidance on the specific factors the OCC would consider in determining that a bank had successfully rebutted the presumption, both for individual trades and for groups of related transactions. *Huntington at 2*
- To determine if the presumption has been rebutted, the OCC should consider: (1) how closely aggregate trades align with the trading desk's stated purpose and historical activity; and (2) whether a significant profit or loss was incurred in connection with the trade. *Huntington at 3*

Revise the "Substantial Transfer of Risk" Requirement

- Hedging a portion of the risk associated with financial instruments held on a banking entity's balance sheet for purposes of long-term investments or financing arrangements—*e.g.*, an interest rate swap used to hedge the interest rate risk associated with a banking entity's issuance of debt—should not constitute a "substantial transfer of the risk." Only a portion of the firm's risk is being hedged (e.g., interest rate). *TCH at 10, SIFMA at 11, 14, FSR at 2*
- "Substantially transfer" language in the rebuttable presumption has been interpreted too broadly. Exclude execution of an interest rate swap within 60 days of purchasing or selling an investment security or issuing debt. This activity does not actually involve a substantial transfer of risk of a financial instrument. *Regional Banks at 9, ABA at 6*

Revise the Market-Making and Underwriting Exemptions

- Volcker should focus on permitted activities, rather than prohibitions with a complex system of exemptions. *ISDA at 4, SIFMA at 6, 15, Regional Banks at 12, CREFC at 14, TIAA at 3*. For example, the current market-making, underwriting, and risk-mitigating hedging exemptions should be viewed as generally permitted activities and defined broadly. *ISDA at 4, SIFMA at 16*
- Refine Volcker to clearly focus on what constitutes prohibited activities. This would allow banks to avoid those activities without having to institute compliance programs to prove that every trade, such as legitimate hedging and market making activities, is within the scope of the law. *CEI at 8*

Increase the Flexibility of the Market-Making Exemption

- Market-making activities should be permitted and defined as "any activity aimed at facilitating the trades of customers, clients, and counterparties." *ISDA at 4*
- Market-making-related activity should include any activity through which a banking entity routinely stands ready to purchase and sell and is willing and available to quote, purchase and sell financial instruments in commercially reasonable amounts throughout market cycles on a basis appropriate for the liquidity, maturity and depth of the market. *SIFMA at 16*
- Increase flexibility of market-making exemption, along lines of Treasury Report recommendations. *ICI at 11-12*
- Increase flexibility in market-making and hedging exemptions. *CRE Assoc. at 1*

- Market-making exemption does not appropriately accommodate customer-driven, cash-settled derivatives transactions and related hedges (e.g., customer accommodation swaps). For example, it is not clear whether small banks can meet the "routinely stand ready" market-making requirement. Create a separate market-making exemption tailored to otherwise permissible customer-driven cash-settled derivative activities and related hedges. *Regional Banks at 10-11; TCH at A-3*
- Allow banks that are not making a market in derivatives to offer derivatives upon request to a customer, using the exemption for trading on behalf of customers. *Regional Banks at 10-11, TCH at A-3*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
    - Do not review the market-making requirements. The benefits from reducing burdens associated with hedging and market-making are unclear, whereas proprietary trading losses can result in taxpayer-funded bailouts. *BSB at 1-2*

Revise Definition of Counterparty

- Volcker Rule should expressly recognize that many transactions in the inter-dealer market may constitute part of a market-making business, risk mitigating hedging activities, or both. *ISDA at 9*
- Affiliated trading desks should be able to be treated as "clients, customers, and counterparties." Regulations exclude from the term "client, customer, and counterparty," a trading desk or other organizational unit of another banking entity with trading assets and liabilities of $50 billion or more, unless the trading desk meets certain documentation requirements (or the transaction is conducted anonymously on an exchange or similar trading facility that permits trading on behalf of a broad range of market participants). *SIFMA at 18*

Increase the Flexibility of the Underwriting Exemption

- Underwriting activity should include any activity through which a banking entity acts in furtherance of a distribution of financial instruments. *SIFMA at 16*
- Underwriting activities should be permitted and defined as "any activity that assists persons or entities in accessing the capital markets … and any activities done in connection with a capital raise … (*e.g.*, interest rate or currency hedging transactions in connection with a bond issuance)." *ISDA at 4*
- Expand the underwriting exemption to include post-issuance secondary market trading for a limited time beyond the underwriting period. *Stifel at 4-5*
- Allow issuers to enter into derivative transactions in connection with offerings, typically interest rate or currency hedges. *ISDA at 6*
- Provide guidance as to the "reasonable period" permissible holding period of inventory for underwriting purposes. *CITIC Group at 4*
- Exclude from the underwriting exemption customer facilitation trades in support of underwriting. Customers look to broker-dealers to facilitate liquidity and trading in the course of buying underwritten securities. This may take the form of buying or selling unrelated securities with a customer. This type of transaction is not currently permitted under the underwriting exemption or fiduciary exemption. *Stifel at 2-3*

RENTD Requirement

Examples of Harms Caused by RENTD

- ICI members report instances of brokers declining to execute trades because of difficulty with RENTD compliance. *ICI at 12*
- RENTD restricts the ability of a banking entity to continually acquire inventory and test markets, and puts the trading desk in apprehension of inadvertently exceeding an artificial regulatory limit imposed by the RENTD requirement. This reduces competition and increases the cost of execution. *ISDA at 7-8*
- RENTD's strict inventory limits have hurt liquidity because of a lack of flexibility and discretion to continually acquire inventory and test markets for all clients, customers and counterparties. Recalibrate the RENTD requirement to avoid chilling otherwise permissible market making and underwriting. *SIFMA at 5-6*

Provide Banks Additional Flexibility to Adjust their Determinations of the Reasonable Amount of Inventory

- Historical demand is not a good proxy for forward-looking demand of securities. For example, SIFMA members have recently seen clients demand more exposure to Korean Won hedges than at any time in the previous year as a result of increased tensions with North Korea, and positions in crude oil, infrastructure and real estate as a result of Hurricanes Harvey and Irma. *SIFMA at 5, 18-19*
- Remove requirement of demonstrable analysis of historical customer demand for illiquid, immature, and shallow markets and replace with a requirement that the demand be reasonably anticipated. *Stifel at 2*
- Increase flexibility of market-making exemption, along lines of Treasury report recommendations. *ICI at 11-12*
- Revise the RENTD requirement to provide banking entities with greater flexibility to determine the reasonable amount of market-making and/or underwriting inventory. *State Street at 3, CITIC Group at 4, ISDA at 6-7, Stifel at 2, JBA at 9, ABA at 6, CREFC at 14, BMO at 4-5*
- Allow banks to select management indicators (e.g., the near term demands of clients, etc., market maker inventory, exposures and holding period) depending on respective activities, instead of being required to apply all of such indicators uniformly to all activities. *JBA at 9*
- Revise RENTD to mean market-making and/or underwriting activities conducted in accordance with the banking entity's risk tolerance standards.
    - Provide entities with greater flexibility to determine their RENTD inventory by leveraging existing industry practices and reporting requirements related to managing foreign exchange market-making inventory, such as daily Value at Risk ("VaR") by product and position limits compared to relative levels of client activity. *State Street at 4*
    - RENTD requirements should be deemed satisfied when a banking entity engages in market-making, underwriting and related hedging activities and explores the depth, pricing or liquidity of the market within its capital and liquidity constraints. *ISDA at 6-7*

- RENTD requirements should be deemed satisfied by financial intermediation activities (such as market making and underwriting) conducted in accordance with each bank's existing prudential framework. *ABA at 6, CS Prop at 11-12*
- Revise RENTD to mean market-making or underwriting activities conducted in accordance with the banking entity's risk tolerance standards. Under this approach, a banking entity would be presumed to satisfy RENTD if the activities were consistent with the bank's risk-tolerance standards and, (1) for market-making activities, the bank holds itself out as a market-maker and (2) for underwriting, the bank acts in furtherance of capital-raising activity for a distribution of securities or derivatives. *SIFMA at 19-20, CREFC at 14*
- In the alternative, make RENTD only one factor of many (such as risk-tolerance and risk management processes) designed to calibrate limits for trading desks. *SIFMA at 19-20, CREFC at 14, ABA at 6*
- RENTD should be satisfied by narrow customer driven activity (e.g., customer accommodation swaps), with very small amounts of residual risk, and such activity should be subject to streamlined Volcker compliance program requirements. *FSR at 2*

For Over-the-Counter Derivatives, Focus on Ensuring that Banks Appropriately Hedge the Positions they Maintain

- The concept of holding inventory in OTC derivatives has little to no meaning. *ISDA at 7, ABA at 6, CS Prop at 7, Regional Banks at 10, TCH at A-2, MBCA at 7*

Ensure the Permissibility of Block Trades

- RENTD requirements make it difficult for a market maker to act expediently and efficiently to make markets by buying and selling block positions. A large block trade will frequently exceed the market maker's historical positions and, as a result, its RENTD limits. Customers seeking to enter into large transactions, such as a manufacturer looking to hedge the price of a key input, may find it harder to do so. *SIFMA at 18*
- Volcker has resulted in a reluctance by banking entities to enter into larger trades and to bid aggressively for transactions for fear of crossing the arbitrary and subjective "proprietary" line or violating a RENTD limit. *ISDA at 3*

Other Proposals for RENTD Reform

- Modify the market-making exemption by applying comprehensive limits and measures developed under multiple regulations (*e.g.*, Basel-based bank capital requirements) in lieu of RENTD. *CS Prop at 11-12*
- The distinction between market-maker inventory and financial exposure does not help ensure that a trading desk is functioning under the market making exemption, and distinguishing between the two is very challenging for a trading desk that hedges using the same financial instrument in which it makes a market, as well as for trading desks that primarily trade in derivatives. Modify the market making exemption by requiring only the calculation of financial exposure, which is market-maker inventory net of any related hedging. *CS Prop at 11-12*
- Clarify that banking entities may rely upon the market-making exemption to engage in customer-driven derivatives activities (including the related one-to-one or portfolio hedging

of such derivatives). These activities should be presumed to satisfy the "RENTD" requirement. *TCH at A-3*

Improve the Risk-Mitigating Hedging Exemption.

Banks Should Not be Required to Maintain Ongoing Calibration of a Hedge Over Time

- Correlation analysis and independent testing for risk mitigating hedging exemption is prohibitively arduous. *BOKF at 2*
- Focus on calibration of hedge at time of trade, not over life of hedge. *MBCA at 7*

Eliminate the Requirement to Maintain Documentation of the Specific Assets and Risks Being Hedged

- Measurement of risk mitigating hedging activity should not be required at an individual trade or risk level. Banks should be allowed to monitor at an aggregate or trading desk level, as long as they can evidence that the portfolio of activity is reducing the targeted risk measures on an overall basis. Basel capital rules now provide a mechanism to prevent speculation that might have otherwise previously masqueraded as macro hedging. *CS Prop at 13*
- Revise and simplify risk mitigating hedging exemption requirement. Specifically, remove the overly burdensome and complex documentation requirements related to ongoing monitoring, management, authorization and correlation should be removed. *ISDA at 6*
- Risk-mitigating hedging activity should include any activity through which a banking entity hedges or mitigates existing or anticipated specific risks, on an individual or portfolio basis, as it reasonably deems appropriate. *SIFMA at 16*
- Permit all transactions entered into to hedge a banking entity's risk exposures arising from market-making related and underwriting activities consistent with the banking entity's risk management program. *ISDA at 4*
- Volcker should not require direct matching or linking of a trading desk's derivatives transactions to the specific corresponding risks – whether realized or anticipated – that are being hedged. *ISDA at 5*
- Documentation requirement is too burdensome. *MBCA at 7*
- Increase flexibility in risk mitigating hedging exemption. *CRE Associations at 1*
- Statutory definition of "risk-mitigating hedging" as a permitted activity should be given full effect by streamlining the regulatory requirements to meet this exemption. *TCH at A-4, A-5*

Miscellaneous

- Treat risk mitigating hedging activities with respect to ownership interests in covered funds the same as all other financial instruments. *ISDA at 6, TCH at A-5*
- If exclusions are revised, don't unintentionally remove permission for hedges of active mortgage pipeline and mortgage servicing rights. *MBA at 5*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
    - Do not revise the risk-mitigating hedging exemption requirements. Benefits from reducing burdens associated with hedging and market-making are unclear, whereas proprietary trading losses can result in taxpayer-funded bailouts. *BSB at 1-2*

Permit and/or Exclude Additional Classes of Activity

- Commercial Loans. Banks should be permitted to provide floating rate loans to commercial customers and then enter into a fixed-for-floating interest rate swap with the customer that allows the customer to service the debt at a fixed rate, while the bank hedges with an offsetting interest rate swap with another dealer bank. This activity is not proprietary trading. *Chatham at 1-2*
- Inter-affiliate Trades. Limit the proprietary trading restrictions to customer-facing transactions and exempt all intra- or intercompany trades. *CITIC Group at 3*
- TOB trusts. Exempt from the proprietary trading prohibition any purchases or sales of a security pursuant or related to a contractual obligation to purchase a financial instrument to provide liquidity to a client, customer or counterparty that is related to the market value of securities held by the TOB trusts. *TCH at A-5, A-6*
- Required Regulatory Transactions. Exclude transactions that are entered into as part of the firm's obligation to meet a regulatory, self-regulatory or exchange requirement applicable to the banking entity. *TCH at A-6*
- Matched Book/Price Risk Neutral Trades. Exclude financial instruments that pose no price risk to the firm, such as matched book trades. *BOKF at 4*
- Risk-Reducing Trades. Exclude transactions that can be clearly shown to reduce the institution's price risk to non-trading assets. *BOKF at 4*
- Corporate Reorganizations. Exempt normal corporate activities related to internal reorganizations, stock issuances, buyback programs, and stock retirement. Expressly provide that a financial instrument obtained by a banking entity in connection with a merger, or as a result of an acquisition of another entity, should not be deemed to have been purchased or acquired by that entity for purposes of Volcker. *Huntington at 3*
- Covered Call Options. Exclude written covered call options held against equity holdings in order to hedge downside market risk and enhance the yield of the portfolio. *NSB at 1*
- Transactions in Identified Banking Products. Exclude identified banking products and participations in identified banking products from the definition of "financial instrument." *IIB at 8*
- Cash Collateral Pools. Using (d)(i)(J) authority, exempt cash collateral pools from the proprietary trading and covered fund prohibitions. Cash collateral pools meet the "safety and soundness" prong of (d)(1)(J) because securities lending and its ancillary services are core banking activities at agent banks and provide a significant source of revenue for lenders. The "financial stability" prong of (d)(1)(J) is satisfied because securities lending improves market liquidity by effectively increasing the supply of securities available for market-making, trade settlement and other market activities, and potentially increases market efficiency by reducing the cost of trading. *RMA at 12-14*

Revise the Exemptions for Trading in Domestic and Foreign Government Obligations

- Permit all trading in US and foreign government securities and related derivatives. *ISDA at 9*
- Exclude domestic government obligations and foreign government obligations from the definition of "financial instruments" so that compliance program requirements don't apply to such trading. *BMO at 5-6*
- Expand the government obligations permitted activity exemption, including trading in foreign government obligations, by: (1) removing the unnecessary and impractical location

limitations on trading foreign government obligations, and (2) permitting trading in derivatives on all U.S. and foreign government obligations. *SIFMA at 17*
    - Exemption excludes U.S. Treasury futures and other derivatives on these instruments, which are often used for hedging U.S. government obligation positions. *SIFMA at 17*
- Permit derivative transactions (e.g., futures and options) associated with sovereign debt. *JBA at 9*
- Expand the exemptions for trading in domestic government obligations and foreign government obligations to permit trading in derivatives that reference such obligations. *TCH at A-1*

Revise the Exemption for Trading in Foreign Government Obligations
- Permit all banking entities to trade in government obligations of G-20 countries. *TCH at A-1*
- Expand the exemption for trading in foreign sovereign debt to permit trading to the same extent as U.S. government debt and to permit trading in derivatives on foreign government obligations. *IIB at 7*
- Permit trades in highly liquid sovereign debt issued in the U.S. and countries other than the country where a trading desk is located. *JBA at 9*
- Streamline the conditions of the foreign government obligation exemptions to avoid constraining banking entities' ability to use government securities to conduct ALM activities on a centralized basis. Eliminate the requirements that (1) the obligation be purchased solely by a banking entity that is located in the relevant foreign jurisdiction and is licensed in that jurisdiction and (2) the banking entity reserves no financing to acquire the obligation from a U.S. affiliate. *TCH at A-1, A-2*
- The foreign government obligations exemption does not allow a branch of a foreign bank to transact in the government obligations of the jurisdiction in which the branch is located. Such third-country branches often serve as a critical source of liquidity for the debt of its host country—many are even registered as primary dealers of their host country's securities. *SIFMA at 17*

Exempt Customer-Driven Derivatives
- Market-making exemption does not appropriately accommodate customer-driven, cash-settled derivatives transactions and related hedges (e.g., customer accommodation swaps). For example, it is not clear whether small banks can meet the "routinely stand ready" market-making requirement. Provide a market-making exemption tailored to otherwise permissible customer-driven cash-settled derivative activities and related hedges. *Regional Banks at 10-11; TCH at A-3*
- Include in the "trading on behalf of customers" exemption, any activity done for the benefit of or at the request of a customer or activities related thereto. *SIFMA at 17, Regional Banks at 10-11, TCH at A-3*
- Exclude matched book derivatives trades initiated by customers from proprietary trading or use the "trading on behalf of customer" exemption. *MBCA at 6-7*
- Exclude matched book derivatives trades from the definition of proprietary trading because they have the same price exposure as agent/brokered and riskless principal trades. *BOKF at 2*

Broaden Asset Management Exclusions

- Clarify that riskless principal derivative transactions are exempt from Volcker. *IIB at 8*
- Expand riskless principal prong of the trading on behalf of customer exemption to include activity involving all financial instruments, including OTC derivatives, in which the bank retains counterparty risk. *CS Prop at 10*
- Exclude transactions entered into for the purpose of developing products or services for asset management clients. These transactions are generally entered into to develop a performance track record and ascertain a strategy's viability, rather than for short-term trading purposes. *IAA at 2-3, Regional Banks at 11-12*
- Expand the exemption for trading on behalf of customers to include transactions in financial instruments that a banking entity may enter into with a registered investment adviser affiliate for purposes of developing, testing, or delivering products or services to asset management clients. *IAA at 2-3*
- Exclude transactions in financial instruments executed on behalf of asset management customers, including transactions as agent, broker, custodian, discretionary or non-discretionary trustee, fiduciary, investment adviser, investment manager, or riskless principal. *Regional Banks at 11-12*

Exempt Foreign Exchange Activities

- Exclude transactions for funding purposes (e.g., forex futures, forex swaps and cross currency swaps) from the scope of covered transactions. *JBA at 8*
- Exclude from the trading account definition foreign exchange swaps for funding purposes related to ALM by extending the exception from the definition of "covered position" provided for foreign exchange spot transactions to similar forwards and swaps used for funding purposes. *State Street at 4*
- Exclude cross-currency swaps, FX funding swaps and other common cross-currency financing transactions that are the functional equivalent of currency repurchase agreements or lending transactions from the proprietary trading definition. *IIB at 8*
- Allow banks to independently manage their FX position risk as they see fit. This will increase the bank's profitability and shareholder dividends. *Quintanilla*

Revise the Liquidity Management Exclusion and Generally Exempt ALM Activities

- Simplify the exclusion for liquidity management activities because, as written, it does not exclude all bona fide ALM activities. *TCH at 12, Regional Banks at 12*
  - Permitting all bona fide ALM activities is consistent with (d)(1)(J) which provides that the Agencies may exclude activities that promote the safety and soundness of a banking entity and the U.S. financial stability. *TCH at 13*
- Expand ALM exclusion to include derivatives that are used for valid liquidity management purposes. *SIFMA at 13*
- Eliminate or streamline currently unnecessarily restrictive requirements of the exclusion including: (i) the absence of an expectation of profits from short-term price movements, which could impair a banking entity's ability to manage a liquidity pool of highly liquid assets rather than holding cash or excess reserves at a Federal Reserve Bank; (ii) the limitation of transactions to an amount that is based on documented funding needs and (iii)

the use of only securities - but not derivatives and other financial instruments which may provide similar or equivalent exposure - for trades conducted under this exclusion. *TCH at 12*

- Examination in connection with liquidity management exemption is too onerous. *ABA at 6*
- Categorically exempt activities and business units subject to banking book regulatory capital and accounting treatment from the definition of proprietary trading and, in particular, provide a categorical, principles-based exemption for treasury, funding, ALM, and similar functions. *IIB at 7*
- Exclude transactions in the banking book conducted for portfolio management purposes from the scope of covered transactions. *JBA at 8*
- Definition of "proprietary trading" has hurt bank's ability to address asset-liability and liquidity needs. For example, a bank receiving deposits in multiple currencies needs to be able to enter into short-term foreign exchange transactions on a daily or weekly basis to manage foreign currency exposure. This activity is not speculative, yet SIFMA members have to justify these activities under a mosaic of exemptions and exclusions. *SIFMA at 12*

Revise TOTUS Exemption

- Clarify/provide guidance on requirement that no US personnel be involved in arranging, negotiating, or executing a transaction. *Japan at 2, JBA at 6*
- Remove the requirement that no US personnel can be involved in arranging, negotiating, or executing a transaction. *CITIC Group at 3, CS Prop at 14, IIB at 7*
- Remove the unaffiliated market intermediary requirement. *CITIC Group at 3-4*
- Simplify the TOTUS exemption by exempting all trading activity by foreign bank organizations where the trading position and associated risk resides outside the U.S. Eliminate the TOTUS requirement that the purchase or sale is not conducted with or through a U.S. entity. This requirement is difficult, if not impossible, to monitor for a number of reasons. *CS Prop at 14*
- Restore the TOTUS exemption to its originally intended scope by exempting trading activity by any non-U.S. banking entity that (1) is not directly or indirectly controlled by a banking entity organized in the U.S., and (2) books the trading position and associated risk as principal outside the U.S. The restrictions on U.S. personnel of the international bank or its counterparty arranging, negotiating and executing trades and on trades conducted with or through U.S. entities (including the foreign operations of U.S. entities) should be eliminated. *IIB at 7*
- Permit transactions with U.S. affiliates/branches within a group. Regulation of intragroup transactions between a non-U.S. entity and a U.S. entity is preventing efficient asset allocation and risk adjustments within the group. Regulating these transactions under the TOTUS exemption is unnecessary because U.S. agencies capture risk amounts and other relevant information on the transactions through required metrics reporting. *JBA at 9*
- TOTUS exemption is too complex and burdensome. Taken together with the fund investment restrictions, a foreign excluded fund would be placed at a significant competitive advantage to other funds that are not subject to these restrictions. *EFAMA at 2*
- In order to minimize compliance burdens, many trading desks of Japanese banks rely on the TOTUS exemption. As a result, a purchase or sale with or through an U.S. entity is restricted. Thus, the proprietary trading regulation is preventing Japanese banks' entry into the U.S. financial markets. *JBA at 8*

COVERED FUNDS

Covered Funds Restrictions are Harmful

Covered Funds Definition is Overly Broad

- Current definition requires a detailed legal analysis to determine an entity's status as a covered fund or to prove it is not a covered fund. *SIFMA at 3*
- Current definition is overly broad and prevents banks from seeding numerous types of funds generally not considered hedge funds or private equity funds and imposes substantial compliance burden. *SIFMA at 22-26*
- Overly broad implementation of the covered fund provisions has provided no financial stability benefits, has unnecessarily reduced the ability of bank-owned asset managers to offer comprehensive investment options, and has significantly complicated compliance programs for banks, such as global custodians, providing services to investment funds. *State Street, at 2, ABA at 3* (Super 23A shifts custodians to outside providers)
- Broad definition has resulted in numerous foregone business prospects/curtails seeding. Capital formation – banks have had to shutter investment programs that support venture capital and similar programs. Custodial business – Super 23A has caused banks to shift custody of funds offered to customers to third parties. Foundations and CRA Investments – charitable foundations controlled by a bank may be a "banking entity" even if they are PWI. Family office relationships – banks have had to decline business because pooled investment vehicles for wealth management customers might be covered funds. Financial innovation – prohibitions curtail seeding of new investment strategies. *ABA at 3*
- <u>Securitizations</u>. Volcker Rule has inadvertently restricted the ability of banking entities to engage in lending and loan securitization activities. *LSTA at 1, FSR at 9*
    - <u>Harm.</u> Although loans are generally not treated as "securities" for purposes of the Securities Exchange Act of 1934, loans are generally treated as "securities" for purposes of the Investment Company Act. Because the covered fund definition depends on an issuer's status under the Investment Company Act, which in turn is affected by the issuer's holdings of and activities involving "securities," the covered fund provisions have limited banks' ability to structure traditional commercial lending facilities. *TCH at 17*
    - <u>Hurt CMBS Market-Making/Securitizations:</u> Covered fund definition has caused securitization issues. Market-making restrictions have impaired CMBS liquidity. *CRE Assoc. at 2*
- <u>Inhibits Investment in VC.</u> Prohibitions against investing in venture capital funds hurts entrepreneurs, especially in emerging ecosystems, many of which are in economically distressed areas of the country. *NVCA at 2-3* (provides example of estimated foregone investments), *ABA at 3*

Narrow the Definition of Covered Fund

Focus the Covered Fund Definition on the Characteristics of Hedge/PE Funds

- Limit "covered funds" definition to 3(c)(1) and 3(c)(7) funds engaged in short-term proprietary trading. Many funds that are not hedge funds or private equity funds and that do not engage in proprietary trading are currently covered funds. *ABA at 7, PCI at 2, SFIG at 3-*

5, Regional Banks at 14, Credit Suisse at 2-5, SIFMA at 5, A 22-26, IAA at 1, ISDA at 12, IIB at 8, TCH at 14, CREFC at 15, BMO at 6-7, FSR at 9.

- Replace covered fund definition with a definition that references the characteristics of a traditional hedge fund or private equity fund. *Huntington at 3*
- Eliminate commodity pools from the definition of covered fund. *TCH at 14*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
  - Do not narrow the covered funds definition. Due to the statutory definition of hedge fund and private equity fund, any fund that would be an investment company but for section 3(c)(1) or 3(c)(7) the Investment Company Act of 1940 must necessarily be a covered fund, irrespective of its characteristics. *OSEC at 5-6*

Modify Existing Exclusions and Exemptions

- <u>Foreign public funds</u>
  - Exclude non-US retail funds. *SIFMA at 6, 27, ABA at 7, IIB at 8, FSR at 9-10*
  - Treat foreign public funds and RICs the same; simplify requirements for foreign public fund exclusion. *TCH at A-14-15, State Street at 2, ICI at 8-11, EFAMA at 2-3*
  - Exclude foreign public funds that trade on a foreign exchange or similar trading facility (treat publicly traded non-U.S. funds similar to U.S. publicly traded mutual funds). *ISDA at 13*
  - Remove 15% ownership limit. *SIFMA at 27-28, TCH at A-14-15*
  - Treat ETFs and REITs as non-covered funds, regardless of the percentage of offerings within the U.S. *JBA at 10*
  - Simplify the requirements for an excluded foreign public fund – in particular, remove the requirement to attribute ownership interests of employees and directors (and their immediate family members) to the banking entity – this has been a very significant administrative burden with no safety and soundness benefit, nor does it further the statutory intent of Volcker. *FSR at 3*
- <u>Foreign (privately placed) funds:</u> (1) Eliminate requirement to identify investors who are US persons; (2) treat the fund as a non-covered fund, if an investor cannot be identified as a U.S. person; and (3) treat foreign privately-placed funds that are held/sponsored by a foreign subsidiary of a U.S. bank as non-covered funds. *JBA at 10*
- <u>Loan Securitizations:</u>
  - Revise the loan securitization exclusion to permit holdings of debt, synthetic instruments, or other non-loan assets, in addition to loans (e.g., 20% of assets). *SIFMA at 28-29, CREFC at 15, SFIG at 2, 7-9, LSTA at 9, TCH at A-13* (consistent with section 3(c)(5)(C) and Rule 3a-7)
  - Modify the loan securitization exclusion so that it (1) does not require the issuance of asset-backed securities, (2) more clearly permits issuers relying on the exclusion to hold leases and related assets, and (3) tests whether a securitization is *primarily* backed by loans. Clarify that leased assets are permissible incidental assets under the loan securitization exclusion. *SFIG at 7-9*
- <u>ABCP</u>:
  - Modify the ABCP exclusion so that the ABCP issuer can hold any assets that could be held under the loan securitization exclusion. Remove the requirement that any ABCP issuer enjoy full liquidity support from its sponsor (because this imposes risk

on the ABCP issuer) and remove the 397-day tenor restriction (while ABCP generally has a shorter tenor today, this may change in response to new regulation). *SFIG at 9*
    - Modify the ABCP exclusion to be an effective exclusion from Super 23A. *SFIG at 10*
- <u>SBICs:</u>
    - Make SBIC exclusion available to SBICs that surrender their licenses later in life. *TCH at A-15, SBIA at 2-4, Regional Banks at 14*
- <u>PWI:</u>
    - Explicitly include investments in community development venture capital funds under the public welfare exclusion. *CDVCA at 3*
    - Exclude PWI (especially charitable foundations) from the definition of banking entity. *ABA at 3, 7*
- <u>BOLI</u>
    - Clarify BOLI exclusion so that a Variable Separate Account (VSA) BOLI policy cannot be used as a conduit for a bank to acquire an interest in an investment exposure that, if held directly, would be subject to the covered fund definition. *Schoen at 2*
    - Clarify BOLI exclusion so that a VSA BOLI policy can have non-banking customers (e.g., corporations) as policy holders with interests in an applicable separate account. *Schoen at 2*
- <u>Joint ventures:</u>
    - Rescind FAQ #15 because it significantly limited the practical utility of the joint venture exclusion. Restore the exclusion in a manner that will allow banking entities to share the risk and cost of financing their banking activities through joint ventures. *TCH at A-12*
- <u>Wholly-owned subsidiaries:</u>
    - Exclude "funds-of-one" (a fund with one investor managed by a non-bank manager) from the definition of wholly-owned subsidiary when the fund is advised and sponsored by a non-bank manager. *Simpson Thatcher at 2, 5-6, AIC at 5*
- <u>Extraterritorial funds.</u>
    - Treat joint investments in an entity between a non-U.S. bank and a U.S. bank as a subsidiary of the non-U.S. bank. *JBA at 5*
    - Treat SOTUS funds as non-covered funds (rather than using SOTUS as a permitted activity). *JBA at 11*
    - Formalize existing FAQ 13 regarding SOTUS marketing restrictions. *AIC at 3*

Provide New Exclusions and Exemptions

- <u>Venture capital funds</u>
    - Exclude venture capital funds because the policy objectives and characteristics of these funds focus on long-term investments. *TCH at A-16, MBCA at 8-9, NVCA at 4-5, ABA at 7*
    - Exclude fund structures that are used to invest in start-up and growth-stage companies and lend to businesses in need of capital. *TCH at A-16*
    - Exclude venture capital funds or related funds that are formed for the purpose of making investments in emerging growth or early-stage companies associated with local communities. *Huntington at 3*

- Customer-facing transactions structures (funds-of-one), family wealth management vehicles
    - Exclude family wealth vehicles, customer-facing transaction structures, and other similar entities (titling trusts, funeral trusts, etc.). *SIFMA at 29-30, ISDA at 13, Huntington at 4, Regional Banks at 14, TCH at A-10-12, ABA at 3, 7, FSR at 3, 10*
- Domestic government obligations, TOBs, Re-REMICs
    - Exclude tender option bond structures and similar structures whose financial instrument holdings consist only of domestic government obligations (which banks may currently trade in). *SIFMA at 6, A-31*
    - Exclude vehicles primarily backed by government obligations (Re-REMICs). *Regional Banks at 14*
    - Clarify that the loan securitization exclusion applies to re-REMICs. *TCH at A-14*
- Securitizations
    - Exclude debt securitizations and other similar financing vehicles. *SIFMA at 6, ABA at 7, BOKF at 8*
    - Exclude vehicles backed primarily by loans or leases. *Regional Banks at 14*
    - Permit foreign banks to hold investments in foreign securitizations that are covered funds to the extent mandated by non-U.S. risk retention rules. *IIB at 8*
- REITs
    - Exclude real estate investment trusts. *Regional Banks at 14, TCH at A-15-16*
    - Exclude passive pass-through trusts that are established at the request of customers and hold interests in REITs. *TCH at A-15-A-16*
- Bank-affiliated foundations
    - Exclude holdings of covered-funds by bank-affiliated foundations. *MBCA at 10-11* (such investments not held "as principal"), *ABA at 3, 7*
- ESCs.
    - Exclude employees' securities companies (ESCs) (including those that do not have an exemption under section 6(b) of the '40 Act). Allow ESCs to invest in covered funds if they have only *de minimis* bank capital. *Credit Suisse at 2-3, 11-12*
- Exclude traditional bank activities (generally)
    - Allow banking entities to engage in wealth management, asset management, lending and investment through fund structures. *SIFMA at 4*
    - Using (d)(1)(J) authority, exempt long-term investments in fund vehicles that do not engage in proprietary trading. This would foster economic growth, enable U.S. banking entities to be more competitive with foreign firms, and appropriately tailor the covered fund restrictions. *TCH at 17*
    - Broaden the exclusion for bank funding and financing structures, so that vehicles used to finance activities for banks and bank holding companies would be excluded from the definition of covered fund. *TCH at A-14*

Revise Super 23A

Incorporate Exemptions in Section 23A of the Federal Reserve Act

- Incorporate exemptions in section 23A of the Federal Reserve act and Regulation W into Super 23A. The current Super 23A limits have resulted in outsourcing certain routine services to third-parties, resulting in higher costs and inferior services. The ordinary transactions prohibited by Super 23A but allowed under Regulation W do not raise concerns about bailouts of funds, or safety or soundness. *ABA at 3, 8, 14,16 Credit Suisse at 2-3, 6-8, SIFMA at 6, 36-37, Huntington at 4, IIB at 9, TCH at 19, 20, FSR at 10*

- Exclude credit exposures extended in the ordinary course of providing custody services from the scope of Super 23A. Currently, bank-owned asset managers are effectively prohibited from using affiliated custodians by Super 23A, resulting in operational inefficiencies and reduced custody options for the often small subset of their fund offerings deemed covered funds. The lack of a custody exposure exception has required custody banks to implement extensive compliance programs to ensure that custody services provided to their non-affiliated asset management customers do not inadvertently violate Super 23A. Custodians also have been required to seek structural changes to certain customers' investment funds, particularly overseas, in order to provide custody services in compliance with Volcker. *State Street at 2, TCH at 20-21, State Street at 2, ABA at 3, 8, 14,16*

Other Proposed Revisions to Super 23A

- Do not interpret Super 23A to prohibit accepting a covered fund interest from a customer as collateral. *MBCA at 10*
- Extraterritorial Reach:
    - In the case of an entity in which a foreign bank and a U.S. bank has a joint investment, if the foreign bank acting as a major investor is a Japanese bank, do not treat the entity as a covered fund, which is subject to Super 23A, even if the investment ratio of the U.S. banking entity exceeds 25%. *JBA at 11*
    - Clarify that Super 23A does not reach transactions by an international bank or its affiliates acting outside the U.S. *IIB at 9, Credit Suisse at 2-3, 7-8*
    - Allow a foreign banking entity to provide short-term or bridge financing for covered funds that it advises, manages, or sponsors. *CITIC Group* at 6
    - Recognize that qualifying foreign excluded funds are not subject to Super 23A. *Credit Suisse at 9*
- Best Execution. Permit covered transactions between a covered fund and an affiliate where necessary for best execution, consistent with fiduciary duties, and not prohibited by law. *Credit Suisse at 2-3, 7-8*
- Prime Brokerage:
    - Clarify the definition of prime brokerage transaction to include common transactions such as: (1) lending and borrowing financial assets, (2) provision of secured financing collateralized by financial assets, (3) repurchase and reverse repurchase of financial assets, and (4) derivatives, and (5) clearing and settlement activity. These are common brokerage and prime brokerage transactions that do not implicate the risks that Super 23A was designed to address. *SIFMA at 38-39*
    - Clarify that services in the nature of the customary services provided by banks to their cash collateral pools would be deemed "prime brokerage transactions" pursuant to _.10(d)(7) and otherwise meet the requirements of _.14(a)(2)(ii). *RMA at 9-12*

Revise Seeding Exemption

Extend the initial "seeding period" exemption to three years

- Automatically grant the permitted 2-year extension for seeding (beyond the initial 1-year) for all bank investments in covered funds. *State Street* at 2, *Credit Suisse at 2, 13-14, CITIC*

Group at 5 (allow the period to be extended to 5 years), *JBA at 11*(allow extension beyond 3 years)
- Codify guidance regarding the acceptable length of a seeding period. *ISDA at 13*

Fully Exempt Seeding Activity
- Exempt or exclude seed investments. *JBA at 11, ABA at 3,7*
- Provide a safe harbor from the definition of proprietary trading for seeding activity undertaken by the fiduciary arm of the banking entity. *State Street at 3*

Narrow the Name-Sharing Prohibition
- Limit the name-sharing prohibition for sponsored covered funds to focus on names related to core brands (i.e., top tier bank holding company and any insured depository institution). IDIs can have thousands of affiliates. The prohibition places undue burden on banks without reducing risk, and the prohibition reduces brand value. *SIFMA at 39-40, TIAA at 4-5, IIB at 8, 35-36*
- Eliminate the prohibition on name-sharing in the asset management exemption (or at least modify the prohibition to allow name-sharing with a separately-branded adviser). Many advisers have had to change their names even when the names were not similar to those of affiliated banks. This has confused investors. The name-sharing prohibition is unnecessary because the asset-management exemption already prevents a banking entity and its affiliates from directly or indirectly guaranteeing the obligations or performance of a covered fund. Investors know, even without a ban on name-sharing, that banks will not bail out covered funds due to the disclosures required under the exemption. *IAA at 2, 5-6, FSR at 5*

Narrow Definition of Ownership Interest
- Revise the ownership interest definition to focus on equity interests, limited partnership interests, and other forms of ownership interests only to the extent that they are functionally similar to equity interests and limited partnership interests. *TCH at 18-19, A-13 (covered bond pools), ABA at 7-8, SIFMA at 7, 41-42, Huntington at 4, Regional Banks at 15 , FSR at 10*
- Exclude ordinary debt interests, including debt interests with certain limited voting rights, and senior tranches of securitizations. *TCH at 18-19, LSTA at 6* (exclude debt interests with certain rights in the event of a default event), *JBA at 11* (exclude interests in senior tranches of securitizations whose underlying assets are not replaced during the contract term), *SIFMA at 7, 41-42, Regional Banks at 5, SFIG at 2, 7-8*
- Eliminate “other similar interests.” *Huntington at 4, SFIG at 2, 6-8*
- Exclude “has the right to receive the underlying assets of a covered fund after all other interests have been redeemed and/or paid in full” and an interest that “has the right to receive all or a portion of excess spread” and replace with the sponsorship category *see* §_10(d)(6)(i)(C) and (D). *JBA at 11*
- Exclude total return swaps (trading in total return swaps would still be covered under the proprietary trading restrictions). Total return swaps involve economic exposure, but not ownership (e.g., voting rights). Total return swaps are generally not used for speculative purposes. *CITIC Group at 5-6*

- Create a safe harbor for any loan, repurchase facility, debt security, or other form of bank financing that has the following characteristics: (1) the debtholders have payment entitlements consisting only of the right to receive a stated interest rate and the right to receive fixed principal payment on maturity, (2) the entitlements to principal and interest are absolute and not reduced to reflect write-downs or charge offs, and (3) the debtholders have no rights to receive the underlying assets (except in the case of foreclosure). *SFIG at 7*

Revise 3% Individual Fund and Aggregate Limits; Capital Deductions

- Raise the *de minimis* threshold to 10% using (d)(1)(J) authority. *CITIC Group at 5*
- Create an appeal and review process for cases where a banking entity is unable to reduce its position below the *de minimis* threshold using (d)(1)(J) authority. *CITIC Group at 5*
- Apply 3% Tier 1 aggregate capital limit at the global level for all firms. The limit would apply at the top-tier level, rather than on a firm-by-firm basis. Grandfather all existing funds. *Credit Suisse at 2, 13, 15, IIB at 8* (do not apply the limit at the US intermediate holding company-level)
- Do not apply the 3% limits to underwriting and market-making activities (arguing that these limits should apply to investments, not to underwriting or market-making). *SIFMA at 7, 32-33, CREFC at 15, ISDA at 13, FSR at 3*
- Eliminate capital deduction for underwriting and market-making in covered funds because desks must already hold capital against these instruments. *SIFMA at 33-34*
- Expand risk-mitigating hedging exemption to permit hedging with covered funds to the same degree as under the proprietary trading risk-mitigating hedging exemption. Remove the 3% limits and capital deduction for covered funds held for hedging. The statute does not distinguish between proprietary trading and covered funds in establishing a hedging exemption. The current exemption, which is limited to certain compensation arrangements, is too narrow. *SIFMA at 34-36, TCH at A-4-5*

Other Covered Fund Reforms

- Employee investments: Allow employees that are "Affiliated Management Persons" under Rule 3c-5 or that have a specified net worth to invest in covered funds. *Credit Suisse at 11*
- Remove prohibition: Instead of an outright prohibition on a banking entity's acquisition of investments in a covered fund, place limits on the bank's ability to invest expressed as a percentage of the bank's capital and surplus. *Huntington at 4*
- Fund-linked products: Clarify that providing fund-linked products hedged by interests in covered funds is not a high-risk strategy. *SIFMA at 34*

COMPLIANCE PROGRAM AND METRICS REPORTING REQUIREMENTS

Compliance Program and Metrics are Unduly Burdensome

- Compliance program requirements have resulted in substantial costs and uncertainty for banking entities. Costs associated with the CEO attestation process and metrics have been particularly high. *ISDA at 10*

- Some institutions have been expected to have dedicated offices, committees, or teams focused entirely on Volcker. *Regional Banks at 17-19*
- Significant resources must be devoted to meet the Volcker compliance program and metric reporting requirement. *CS Prop at 17-18, 20*
- Banking entities have spent hundreds of millions of dollars to build information technology systems and processes to generate complex metrics that provide little, if any, information on whether activity is impermissible proprietary trading. *ISDA at 10*
- Volcker has resulted in an unwarranted compliance burden, which has caused thousands of job losses. *Quintanilla*

Comprehensive Reform of Volcker Compliance Program

Enable Greater Tailoring

- Permit banking entities to tailor their compliance programs to their specific business activities and risk profiles. *ISDA at 10-11*
- Permit tailored compliance programs. A banking entity should have an obligation to (1) establish and maintain policies, procedures, records and systems to conduct, monitor and manage its activities and investments in a manner reasonably designed to ensure compliance with Volcker, appropriate to the size, scope, and risk profile of the banking entity's trading and covered fund activities or investments, and (2) make the foregoing policies, procedures and records available to the applicable Agency upon request. *TCH at 24*
- Remove exemption-specific compliance requirements in favor of the general compliance program, simplify section 20, and remove Appendix B; provide for a principals-based framework that allows each firm the discretion and flexibility to develop and implement a compliance program that is appropriate to its structure and activities. *SIFMA at 47-51*
- Streamline compliance and reporting requirements, leverage current risk-based reporting formats, and tailor requirements to trading-based businesses. *CRE Assoc at 1*
- Drop Volcker-specific program. Demonstrate compliance through normal supervisory process. *ABA at 4, 8-9*, *BOKF at 9* (in particular, drop independent testing)

Eliminate "Trading Desk" Concept

- Banking entities should be given the flexibility to align their Volcker trading desk hierarchy to their existing management structure and design a compliance program that is appropriate to the specific activities and risk profile of their organization. *CS Prop at 19, SIFMA at 50-51, CREFC at 16*

Extraterritoriality

- Non-U.S. banking entities that do not avail themselves have the protection of the U.S. safety net should not be subject to Volcker, including its compliance program and metrics reporting obligations. *CS Prop at 17*

Eliminate or Revise Enhanced Compliance Program (including CEO Attestation)

Eliminate Enhanced Compliance Program

- Eliminate the Appendix B enhanced compliance program requirements. *SIFMA at 7*

- Eliminate the Appendix B enhanced compliance program requirements, which go far beyond the scope of the statute and have yielded little regulatory benefit. Eliminating these requirements is particularly appropriate for entities that have limited short term trading activities and do not sponsor, invest in, offer or enter into relationships with covered funds. *Schwab at 2*

Eliminate CEO Attestation or Other Aspects of Enhanced Compliance Program

- Remove the following requirements from the enhanced compliance program: (1) CEO attestation, (2) mandatory board reporting, (3) annual independent testing, (4) trading desk-level limits (e.g. VaR for each market-making desk), (5) identification of covered funds, and (6) requirements related to "ensure" compliance with Volcker. *Regional Banks at 17-19*
- Modify the Rule to clarify that the attesters should be the appropriate senior management officer in the U.S. The internal decision-making process for annual attestation is based on the U.S. laws and does not suit Japanese laws, regulations and custom. *JBA at 4*
- Eliminate CEO attestation requirement. *State Street at 5, CS Fund at 2, 16,18, Regional Banks at 17, BMO at 8*
- At least streamline CEO attestation requirement with standardized language that is clearly communicated to the industry, well in advance of the deadline. *FSR at 4*
- <u>Comments Supporting Maintaining or Strengthening the Volcker Rule's Requirements</u>:
    - Do not eliminate the CEO attestation requirement. Holding the CEO accountable is a powerful incentive that fosters compliance. *Better Markets at 14*

Include Only Trading Assets/Liabilities in Enhanced Compliance Threshold

- Only entities with $10 billion or more in trading assets and liabilities should be subject to the enhanced compliance program, including the CEO attestation requirement. *Huntington at 5*
- Only entities with $20 billion or more in trading assets and liabilities should be subject to the enhanced compliance program. Alternatively, apply the enhanced compliance program only to banks whose trading assets and liabilities represent 5% or more of the bank's total US asset and liabilities. *Regional Banks at 15-17*
- Replace the current threshold for the enhanced compliance program with a threshold of $50 billion based on combined trading assets and liabilities (perhaps combined with an additional trigger based on the ratio of trading assets/liabilities to total assets). *State Street at 5*
- Replace the $50 billion asset threshold in Appendix B with a threshold that accounts for a company's activities and risk profile. Alternatively, if an asset-based threshold is retained, it should be raised substantially higher than $50 billion. *FSR at 3-4.*

Other Reforms

- <u>Exclude Insurance Assets.</u> Exclude permitted activities of a "regulated insurance company" from the scope of the compliance program requirement, and exclude assets associated with these activities from the definition of total consolidated assets. *Insurance Coalition at 2* ($200 billion insurance SLHC with $5 billion IDI has insurance activities exempt from prohibitions, but is subject to enhanced compliance regime)
- <u>Allow Simplified Compliance Based on Trading Assets/Liabilities</u>. Permit use of a reduced compliance program if each of market risk trading assets and liabilities is less than the greater of $1 billion or 5% of total consolidated assets. *MBCA at 3*

- Tailor Based on Risks Posed to US. In addition to the size of an entity's consolidated assets (on a global basis), the scope of the enhanced compliance program should also take into account the risks the entity poses to the U.S., such as the balance of trading assets or the actual activities conducted in the U.S. market. *JBA at 5*

Eliminate or Revise Metrics

Eliminate Metrics

- Eliminate the quantitative metrics regime of Appendix A of the implementing regulation. *SIFMA at 7, TCH at 25, State Street at 5, ABA at 9, SIFMA at 53-54, CREFC at 16, FSR at 4, ISDA at 8-9*
- Replace the metrics regime with an overall supervisory review and compliance program where (many risk and source of revenue metrics are already delivered daily to the supervisory regulators). *FSR at 4*
- Much of the Volcker analytics, if not all, are based on backward looking data and provide little insight into how risk in market making and hedging activities should evolve given changing conditions. The enhanced prudential standards constitute the best possible approach to protecting taxpayers, and the Volcker reporting requirements are ineffective because they:
  - Cannot be aggregated across institutions reliably and therefore cannot effectively be used for systemic risk analysis;
  - Force banks to assess market-making inventory based on history instead of more meaningful market based factors and therefore constrain market liquidity;
  - Restrict hedging activities through a prescriptive analysis that restricts the range of possible responses to changing conditions;
  - Have contributed to the contraction in several liquidity dimensions and the general health of the markets (deterioration in issuances, dealer inventories, and trading volume in the CMBS market has coincided with the implementation of the Volcker Rule and other Dodd-Frank regulations); and
  - Can travel upstream from the secondary market to the origination phase of a CMBS loan, adding to borrowing costs. *CREFC at 11-12*

Revise Metrics

- Eliminate Certain Metrics
  - If metrics are retained, limit them to a subset of the current metrics (e.g., only Risk Management Metrics and Source of Revenue Measurements). *ISDA at 8-9, FSR at 4, 11*
  - If metrics are not eliminated, align them with traditional regulatory reporting practices, including limiting such reporting to the metrics that most directly relate to safety and soundness and reducing reporting frequency (*e.g.*, quarterly, with the reporting due 30 days after the prior quarter-end). *TCH at 25*
  - Eliminate metrics unsuitable for FX trading; limit metrics reporting to those most directly relating to safety and soundness, and reduce reporting frequency and timeframes. *State Street at 5*
  - Customer-Facing Trade Ratio, Inventory Turnover, Comprehensive P&L Attribution give no insight into Volcker compliance. *BOKF at 9-10*

- Exclude Class of Activity from Metrics.
    - Risk mitigating hedging for seed investments should not be included in trading metrics. *CS Prop at 2, 16, 17*
    - Make the following revisions to certain metrics requirements:
        - Trading desks should not have to calculate or report an inventory aging metric with respect to their market making activities related to OTC derivatives.
        - For purposes of calculating the customer facing metrics for OTC derivative transactions, trading desks should be permitted to choose a single measure of valuation as long as that measure is used consistently by a given trading desk (banking entities should be required to disclose which method is being used for each trading desk);
        - Trading desks that engage in risk-mitigating hedging should not be required to report any of the customer-facing activity metrics; and
        - Banking entities should be allowed to calculate the Stress VaR metric using a methodology that aligns best with their day-to-day risk management of their trading business and risk profiles. *CS Prop at 20.*
- Reduce reporting frequency. Curtail the reporting frequency for metrics to quarterly for all banking entities. *CS Prop at* 20, *TCH at 25, FSR at 4*
- Limit metrics to risks within the U.S. *JBA at 4*
- Reduce requirements for smaller trading desks. Ease compliance program requirements for market-making desks below a certain size (e.g., exemption from metrics reporting). *JBA at 9*

Regulator Coordination and Collaboration

Interpretations by Different Agencies

- Banking entities have also been subject to differing interpretations taken by the Volcker Agencies in connection with their reviews and oversight of the Volcker Rule. *ISDA at 11, SIFMA at 52-53*

Appoint a Lead Agency

- Appoint one lead agency for interpretation and examination. *SIFMA at 52-53 CREFC at 16*
    - Agencies should designate one prudential regulatory agency to have the lead role in developing and providing interpretive guidance and coordinate with the other Agencies in examination and enforcement. *IIB at 9*
    - Establish a single Agency to take the lead for all rulemaking, interpretation and guidance regarding the Rule, while providing for each Agency to maintain their existing enforcement and supervisory roles. *BMO at 8-9*
    - Agencies should enter into interagency agreements designating the Federal Reserve as lead agency for developing rules and interpretive guidance. *TCH at 26, FSR at 12*
    - Designate one agency to examine the entire firm for Volcker compliance (i.e., the prudential regulator for the dominant legal entity in the bank holding company organization). *ABA at 9*
    - Agencies should enter into a formal written interagency agreement on Volcker Rule interpretation that (1) delegates to one agency responsibility for interpretation and guidance and (2) provides that a single regulator will be charged with coordinating the Volcker examination of a banking entity. The Interagency Group has failed to

address a number of issues in a timely fashion and, in particular, did not provide an FAQ stating that the Agencies would not accept qualified attestations. *CS Prop at 21*

Establish Interagency Examination Procedures

- Establish interagency examination procedures to improve intra-agency and interagency consistency as well as to enhance transparency by setting consistent, published expectations for the conduct of Volcker examinations. *TCH at 26, ABA at 9*

Improve Coordination (Generally)

- Agencies should clarify and segregate their roles to ensure an efficient implementation of the Rule. *JBA at 4*
- Agencies must coordinate to provide a single point-of-contact for compliance and other implementation efforts, as well as for requesting clarifications, interpretations, and (where needed) relief from Volcker requirements. *ISDA at 11*
- Generally improve administration of the rule by the Agencies. *ICI at 3, 12-13*

Defer Enforcement While Revision Pending

- Agencies should defer taking formal or informal enforcement action against a banking entity with respect to any inadvertent violations (or potential violations) of Volcker while the Agencies are considering revisions to the Rule. Banking entity should be permitted a period of time during which it may remediate the matter. *TCH at 26*

Eliminate Volcker-Specific Exams

- Agencies should examine for Volcker compliance as part of their general safety and soundness examinations. Subjecting banking entities to multiple exams conducted by multiple agencies is burdensome and unnecessary. Eliminating separate Volcker exams will substantially decrease compliance burdens and will conserve agency resources. *Schwab at 2*

Use of Technology for Compliance

- Technology-based systems could be used to track holding periods and issue trigger warnings when thresholds are at risk of being violated. *PCI at 2*
- Technology-based compliance can be used to more effectively evaluate compliance, including transaction surveillance. *DBT at 27*

COMMENTS SUPPORTING MAINTAINING OR STRENGTHENING THE VOLCKER RULE'S REQUIREMENTS

Do not Repeal or Weaken the Volcker Rule

- Do not repeal/weaken the Volcker Rule. *Standardized Letter at 1, BSB at 1-3, Jackson at 1, Warner at 1, Frost at 1, Barker at 1, Huzenis at 1, Martin at 1, Thompson at 1, Chabra at 1, Clark at 1, Ditore at 1, Franks at a1, Halsey at 1, Harris at 1, Hollowell at 1, Klein at 1, Kline at 1, LaPage at 1, Louton at 1, Lynch at 1, Maddox at 1, Magnan at 1, Malone at 1,* *Persico at 1, Shimizu at 1, Winternheimer at 1, Senators at 1-3, Better Markets at 13-15, CAP 1-4, Jubilee at 1, Public Citizen at 1-6, DBT at 1, OSEC at 1-2, 6-7*

- Banks should not be able to engage in proprietary trading with depositor's funds. *Huzenis at 1, Senators at 2, Thompson at 1, OSEC at 2, Barker at 1, Standardized Letter at 1*
- A bank that engages in proprietary trading should not (1) have access to FDIC insurance, (2) have access to the Fed's discount window, or (3) receive interest on its deposits with the Fed. *BSB at 1-2*
- The benefits from reducing burdens associated with hedging and market-making are unclear. *BSB at 1-2*
- The revision and review contemplated has no justification in fact or law – Volcker is not having negative effects on bank profits, market liquidity, or economic prosperity. As a legal matter, Congress was clear that it intended to protect the financial stability of the US without regard to diminished profits or compliance costs to banks. *Better Markets at 2*
- Any future changes to the Volcker Rule should be based on facts. *Senators at 2*
- Strengthen the Volcker Rule in various places and vigorously enforce it. For example, the part of the rule implementing the backstop against activity that would create material conflicts of interest is flawed and should be strengthened. *Better Markets at 14-15*

Increase Transparency

- Improve transparency with regard to the rule and its implementation. Agencies should share with the public standards for compliance, enforcement efforts, and an assessment of the success or failure of banking institutions to meet compliance standards. *Jubilee at 1*
- Before any further step is taken by the Agencies, the regulators should release aggregate and desk-by-desk data on inventory turnover and aging, the volume and proportion of trades that are customer facing, profit and loss attribution, and compensation arrangements for employees and executives responsible for trading. *CAP at 2*
- Agencies should publish: enforcement actions; data for each individual bank trading desk, with a delay; details of private equity and hedge fund ownership and activity. *Public Citizen at 4-5*
- Better and transparent enforcement of the Volcker Rule is necessary. Enforcement actions for violations should be made public. Trading results should also be made public, with a delay to protect proprietary information. *Standardized Letter at 1*

Benefits of the Volcker Rule

The Volcker Rule Has Reduced Systemic Risk and Conflicts of Interest.

- Volcker protects the U.S. financial system from future bailouts. *Huzenis at 1, CAP at 1-3, OSEC at 2, Barker at 1, BSB at 1-2, Standardized Letter at 1, Thompson at 2*
- Volcker has reduced volatility and systemic risk, increased stable profitability in the financial sector, and increased lending. *Senators at 2-3*
- Volcker mitigates conflicts of interests and ensures that banks engage only in client-focused products and services and traditional activities like taking deposits and making loans. *Senators at 1*
- Volcker helps mediate the conflicts of interests between banks and their clients and provides for the stability of the economy. *Jackson at 1*

- Reducing or eliminating Volcker restrictions will likely result in greater conflicts of interest. *BSB at 3*
- Volcker addresses inherent conflicts of interest and takes a step towards ensuring banking groups engage only in client-focused products and services and traditional activities such as deposit-taking and loan-making. *Public Citizen at 3*

Other Benefits of the Volcker Rule

- The Volcker Rule is necessary to change corporate culture at large banks. *BSB at 2*
- Trading losses may reduce credit availability in a crisis. Relaxing the Volcker Rule is likely to cause a reduction in credit availability. *BSB at 3*
- The Volcker Rule has prompted many banks to focus on productive loan-making, which has also helped to grow the Main Street economy. *Standardized Letter at 1*
- The Volcker Rule is an indispensable component of the reforms that are preserving and protecting financial market stability and economic prosperity. *Better Markets at 3*

COMMENT LETTER LEGEND

AAF	American Action Forum
ABA	American Bankers Association
AIC	American Investment Council
Barker	Tom Barker (private citizen)
Better Markets	Better Markets, Inc.
BMO	Bank of Montreal and BMO Harris Bank N.A.
BOKF	Bank of Oklahoma Financial Corporation
BSB	Beneficial State Bank
CAP	Center for American Progress
CBA	Canadian Bankers Association
CBA-Ill	Community Bankers Association of Illinois
CDVCA	Community Development Venture Capital Alliance
CEI	Competitive Enterprise Institute
Chabra	Steve Chabra (private citizen)
Chamber	U.S. Chamber of Commerce
Chatham	Chatham Financial Corporation, Atlantic Capital Bank, Blue Hills Bank, et al.
CITIC Group	CITIC Group Corporation
Clark	Sandra Clark (private citizen)
CRE Associations	Commercial Real Estate Associations
CREFC	Commercial Real Estate Finance Council
CS Fund	Credit Suisse Holdings USA – Covered Funds Letter
CS Prop	Credit Suisse Holdings USA – Proprietary Trading Letter
DBT	Data Boiler Technologies, LLC
Del Duca	Dan Del Duca (private citizen)
Ditore	Steve Ditore (private citizen)
EBF	European Banking Federation
EFAMA	European Fund and Asset Management Association
EnerBank	EnerBank USA
Franks	Don Franks (private citizen)
Frost	Melvin Frost (private citizen)

FSR	Financial Services Roundtable
Halsey	Bill Halsey (private citizen)
Harris	Mark Harris (private citizen)
Hollowell	Edwin Hollowell (private citizen)
Huntington	Huntington National Bank
Huzenis	Audrey Huzenis (private citizen)
IAA	Investment Adviser Association
ICBA	Independent Community Bankers of America
ICI	Investment Company Institute
IIB	Institute of International Bankers
Insurance Coalition	The Insurance Coalition
ISDA	International Swaps and Derivatives Association, Inc.
Japan	FSA of Japan and Bank of Japan
Jackson	Ellen Jackson (private citizen)
JBA	Japanese Bankers Association
Jubilee	Jubilee USA
Klein	Frederick Klein (private citizen)
Kline	Norma Kline (private citizen)
LaPage	Theresa LaPage (private citizen)
Louton	John Louton (private citizen)
LSTA	Loan Syndication & Trading Association
Lynch	Janet Lynch (private citizen)
Maddox	Charles Maddox (private citizen)
Magnan	Robert Magnan (private citizen)
Malone	Peggy Malone (private citizen)
Martin	Stephen Martin (private citizen)
MBA	Mortgage Bankers Association
MBCA	Midsize Bank Coalition of America
MUFG	Mitsubishi UFJ Financial Group, Inc.
NSB	Norway Savings Bank
NVCA	National Venture Capital Association
OSEC	Occupy the SEC

Persico	John Persico (private citizen)
PCI	Property Casualty Insurers Association of America
Public Citizen	Public Citizen
Quintanilla	Mike Quintanilla, FX Director at First Tennessee Bank
Regional Banks	BBVA, Compass Bancshares, BMO Financial Corp, Capital One, CIT Bank, NA, Citizens Financial Group Inc., Discover Financial Services et al
RMA	Risk Management Association
SBIA	Small Business Investor Alliance
Schoen	MB Schoen & Associates, Inc.
Schwab	Charles Schwab Corporation
Senators	Senators Jeffrey Merkley and Sherrod Brown
SFIG	Structured Finance Industry Group
Shimizu	Michael Shimizu (private citizen)
SIFMA	Securities Industry & Financial Market Association
Simpson Thatcher	Simpson, Thatcher & Bartlett, LLP
Standardized Letter	Standardized Letter
State Street	State Street Corporation
Stifel	Stifel Financial Corporation
TCH	Clearing House Association L.L.C.
Thompson	Brian Thompson (private citizen)
TIAA	Teachers Insurance and Annuity Association of America
Warner	Ned Warner (private citizen)
Winternheimer	Peg Winternheimer (private citizen)