ACLI
Financial Security. For Life.

Julie A. Spiezio
Senior Vice President, Insurance Regulation & Deputy General Counsel
(202) 624-2194 t (866) 953-4083 f
juliespiezio@acli.com

December 20, 2010

The Honorable Ben S. Bernanke
Chairman, Board of Governors of the
Federal Reserve
20th Street and Constitution Avenue, NW
Washington D.C. 20551

Re: Docket No. R-1397; RIN No. AD 7100-58; Conformance Period for Entities Engaged in Proprietary Trading or Private Equity Fund or Hedge Fund Activities.

Dear Chairman Bernanke:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. On behalf of all our members, we appreciate the opportunity to submit commentary for consideration on the Federal Reserve Board's (FRB) proposed rule on the conformance period for entities engaged in proprietary trading or private equity fund or hedge fund activities that are subject to the Volcker Rule under the Dodd-Frank Act (DFA).

Our comments are presented from the point of view of entities that generally are not subject to the Volcker Rule, but whose business activities necessitate interaction with and are to a certain extent dependent upon financial institutions that will need to comply with those provisions of the DFA when they become effective. We believe that, as a general matter, in connection with considering whether to grant conformance period extensions to sponsors and investors subject to the Volcker Rule's restrictions on private equity funds and hedge funds ("Restricted Entities"), federal regulators should consider: (1) any potential adverse impact on existing fund investors in the applicable funds ("Fund Investors"); and (2) ways that such adverse impacts can be managed and/or mitigated. In our view, adverse impacts could arise as follows:

1. Tax and Regulatory Issues. Fund Investors could be adversely impacted by tax and regulatory issues resulting from sales of fund interests by Restricted Entities. For example, we understand that certain volumes of sales of a fund's interests within a 12-month period may cause the applicable fund to be treated as a corporation for U.S. tax purposes (rather than as a partnership) under the IRS' publicly-traded partnership rules. In addition, we believe that a sale of fund interests to "benefit plan investors" could, under certain circumstances, result in the fund being considered "ERISA plan assets". Either of these results could be detrimental to Fund Investors. Other regulatory and tax consequences may arise in different situations that could impact Fund Investors.

   Due to the tax and regulatory nature of these types of issues (and the fact that general partners, acting in the best interest of the funds and Fund Investors, will be unlikely to consent to a transfer under such circumstances), we believe that the conformance regulations should make clear that, in connection with granting extensions, federal regulators would presume that "reasonable best efforts" have been exercised by Restricted Entities when tax or regulatory circumstances exist that prevent the general partner from granting its consent with respect to a particular fund.

2. Misalignment of Interests between Sponsors and Investors. Fund Investors could be adversely impacted if Restricted Entities that are fund sponsors are required, in compliance with the Volcker Rule, to relinquish their role as the general partner of funds or incentivized to prematurely terminate or liquidate underlying fund investments at unattractive prices or otherwise take actions potentially adverse to Fund Investors. We believe these circumstances would create a misalignment of interests and conflicts of interest between Restricted Entities that sponsor funds, on the one hand, and their Fund Investors, on the other. Impacts could include a desire to engage in hasty asset sales to get out of the business or a spin-out, sale, restructuring or change-of-control of the fund management business that could be detrimental to Fund Investors. In addition, there is a real risk that key personnel would leave the Restricted Entities' funds management business, which would create a risk that the fund's portfolio investments would no longer be adequately managed, and that sufficient personnel could not be retained or recruited to manage such assets. We therefore would urge the FRB to incorporate in the conformance regulations the appropriate level of discretion and the greatest possible flexibility for the FRB, with respect to all affected funds but particularly illiquid funds, to grant approvals for Restricted Entities to maintain their activities and investments for the full amount of time permitted under the Volcker Rule. Overly restrictive regulations and an unnecessarily rigid process will operate against the interests of Fund Investors as well as Restricted Entities.

As we noted in our letter dated November 1, 2010 addressed to the Financial Stability Oversight Council concerning its study on Volcker Rule issues, insurance companies are significant investors in alternative asset classes such as funds that may be covered by the Volcker Rule. Our members are deeply concerned about the potential financial impact of precipitous secondary market sales of fund interests. Such precipitous secondary market sales may adversely affect not just those Restricted Entities forced to divest according to the Volcker Rule timetable (unless tempered by flexible implementation of the conformance periods). Insurance company financial positions may also be adversely affected if secondary sales by Restricted Entities at substantial discounts reduce the returns realized by insurance company investors seeking to access liquidity by selling their fund interests.

We do not believe that the Volcker Rule reflects Congressional intent to require the FRB, in drafting its regulations, to force the speediest disinvestment in funds and speediest disengagement from fund sponsorship possible under the statutory provisions. To the contrary, we believe that Congress wished the FRB to take into account the financial and systemic interests of Fund Investors and Restricted Entities in developing the conformance regulations, and to give full effect to the statutory conformance periods by allowing itself appropriate discretion and flexibility.

We appreciate the FRBs consideration of our views, and are readily available to respond to any questions which may develop as a result of this commentary.

Respectfully submitted,

Julie A. Spiezio

Julie A. Spiezio

CC: Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System.