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January 10, 2011

**VIA E-MAIL**

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1397 and RIN No. AD 7100-58 —
Proposed Rule Regarding the Conformance Period for Entities Engaged in Proprietary Trading or Private Equity Fund and Hedge Fund Activities[1]

Dear Ms. Johnson:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, which is one of the largest diversified financial services companies in the United States, with $260.2 billion in assets as of September 30, 2010, appreciates the opportunity to respond to the request by the Board of Governors of the Federal Reserve System (the "Board") for comments on its proposed conformance period rule (the "Proposed Rule") issued under Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[2] The Proposed Rule would implement the conformance period during which banking entities must bring their activities and investments into compliance with the Dodd-Frank prohibitions on proprietary trading and certain relationships with private equity funds and hedge funds provided in new Section 13 of the Bank Holding Company Act (the "Volcker Rule").

Under new Section 13(c)(1), the Volcker Rule is not effective until the earlier of 12 months after issuance of final rules implementing the Volcker Rule or two years after the date of enactment of the Volcker Rule. The Volcker Rule then grants banking entities an initial conformance period of two years following the effective date to bring their activities and investments in hedge funds and private equity funds into compliance with the Volcker Rule. The Board also has the discretionary authority to provide two types of additional extensions to the initial conformance period. First, the Board may grant up to three additional years for any non-conforming activities or investments in funds. Second, it may grant up to five additional years after this first set of extensions for investments in, or additional capital contributions to, certain illiquid funds, but only to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

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[1] 75 Fed. Reg. 72741 (Nov. 26, 2010).

[2] Pub. Law 111-203, 124 Stat. 1376, Section 619 is codified as Section 13 of the Bank Holding Company Act of 1956, as amended (the "BHC Act").

PNC has participated in the comments submitted on the Proposed Rule by The Clearing House Association L.L.C. ("Clearing House") and The Financial Services Roundtable (together, the "Comment Letters"), and supports the views set forth in the Comment Letters. PNC is submitting this letter both to state its support of the Comment Letters and to address further the recommendations set forth in the Comment Letters with respect to "illiquid funds." Specifically, PNC has additional comments regarding the uncertainty and the burden created by the Proposed Rule with respect to the conformance period for illiquid funds. In this regard, it should be noted that the Volcker Rule constitutes a fundamental change to the types of investments that banking entities are, and for many years have been, permitted to make and hold, and the Board should attempt to ensure that the conformance requirements are as non-punitive as possible as it implements the Volcker Rule's statutory mandate.

Definition of Illiquid Funds

PNC urges the Board to give serious consideration to the views expressed in the Comment Letters regarding the definition of illiquid funds in the Proposed Rule. As the Comment Letters point out, the Proposed Rule could in essence largely nullify the extension periods provided in Dodd-Frank for bank entities' investments in illiquid funds.

Procedures for Extending the Conformance Period

PNC also strongly recommends that the Board review and revise the procedures for applying for extensions of the conformance period for illiquid funds, with the goal of maximizing certainty and minimizing burden (for Reserve Bank and Board staff, as well as for banking entities). In this regard, the procedures set forth in the Proposed Rules fail to provide the up-front certainty that banking organizations will require in planning the divesture of numerous interests in illiquid funds. In addition, the procedures are extremely cumbersome, requiring detailed, multiple applications for each fund, which would have to be repeated for every fund requiring extension of its conformance period.[3]

[3] In this regard, PNC strongly supports the Clearing House comment that the Board has seriously underestimated the workload that would be created by the Proposed Rule. In the Paperwork Reduction Act Analysis section of the Preamble to the Proposed Rule, the estimated burden per request is one hour. PNC believes that this estimate represents a small fraction of the time that an individual request will require, given that section 225.181(c)(3) of the Proposed Rule requires that the banking entity provide a "detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s)" and that section 225.181(d)(1) of the Proposed Rule requires a significant amount of information for each extension request. The Board's burden analysis also assumes that each of the impacted banking entities would file only one extension request, when under the Proposed Rule a banking entity might have to file up to four extension requests with respect to a single illiquid fund (three one year extensions, and one five year extension). As noted below, PNC could have as many as 110 illiquid funds that would have to be divested or conformed.

Uncertainty in the Proposed Rule

Under the Proposed Rule, a bank holding company seeking an extension for an illiquid fund would be required to file three one-year extensions and one five-year extension if it sought to take advantage of the full eight-year extension period following the two-year initial conformance period. The very nature of an illiquid fund will make its divestiture extremely difficult, and the uncertainty that is built into the process in the Proposed Rule will unnecessarily complicate that process. Because a bank holding company would not be able to assume that any or all of the four extension requests will be granted, it would not be able to engage in the deliberate, long-range planning that would be necessary to divest an interest in a fund in the best of circumstances. Layering on top of that a process that provides for little certainty with respect to the ability of the bank holding company to hold the fund, the holding company would have an extremely difficult time managing the divestiture of a single interest.

Based on PNC's experience to date in attempting to divest various fund interests, we believe that divestiture of an interest in a fund could take a significant period of time, in some cases six to twelve months. As a practical matter, the sale process would need to commence up to two years prior to the expiration of the conformance period and necessarily include many fund interests that might otherwise liquidate in the ordinary course in order to ensure full compliance with the Volcker Rule. Because these interests do not trade, each sale is in essence a negotiated purchase and sale transaction with all of the attendant due diligence and other steps required for such a transaction, with the added requirement that the transaction terms must be acceptable to the general partner of the fund as well as the potential purchaser of the interest.

Accordingly, among the steps of the process, an investment banker has to be engaged, due diligence information assembled, bidders have to be identified, non disclosure agreements have to be negotiated, bids have to be solicited and evaluated, and purchase and sale agreements need to be negotiated. Again, this process is further complicated by the fact that the buyer and the terms generally must be acceptable to the general partner, not just the seller. Because fund investments are illiquid assets, with a limited number of potential purchasers, this will be an extremely expensive and attenuated process that would have to be carried out for multiple fund interests. For all of these reasons, it is important that a banking entity learn as early as possible that a fund interest qualifies for the full eight-year additional conformance period (including the three one-year extensions) for an illiquid interest.

Accordingly, PNC believes that a banking entity should be permitted to file a one-time application for the illiquid fund extension period (i.e., eight years) any time during the initial two-year conformance period, with a definitive (e.g., 60-day) Board processing period. The Board could require a notice, similar to the FR Y-12A (Annual Report of Merchant Banking Investments Held for an Extended Period), to keep itself apprised of the status of the divestiture and to ensure that the banking holding company is taking the appropriate steps to divest its illiquid interest within the extended time period.

Burden of the Proposed Rule

The one-time application requirement would also significantly reduce the burden on banking entities and Reserve Bank and Board staff alike. As noted in footnote three above, PNC believes that the Board has seriously underestimated the burden of the procedures in the Proposed Rule, both in terms of the number of hours per application and the number of applications that would have to be filed. For instance, the burden estimate appears to assume that each banking entity would file only one application, whereas a banking entity seeking a full extension of the conformance period of an illiquid fund under the Proposed Rule might have to file four applications (three one-year and one five-year) just for that one fund.

In addition, large banking entities are likely to have multiple illiquid funds for which extensions would be sought. For example, PNC currently has investments in approximately 290 nonsponsored illiquid funds. Given the termination dates for these funds, PNC could still have investments in as many as 110 funds at the end of the two-year compliance period (i.e., July 21, 2014, assuming that the effective date is two years after the date of enactment of the Volcker Rule) for which requests for the extension of the conformance period would be required.[4] Having to file multiple requests for each of these funds would be a tremendous burden for both PNC and the Federal Reserve System. Accordingly, we strongly recommend that the Board revise the Proposed Rule as discussed above.

Conclusion

Thank you for considering the views expressed in this letter. PNC appreciates the opportunity to share its views and would be pleased to discuss any of them further at your convenience. If you have any questions, please feel free to contact me.

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4 At the end of the two-year compliance period for which extensions of the conformance period would be sought, PNC is likely to have approximately 80 private equity funds (approximately 110 funds assuming the customary two one-year extension periods implemented by most General Partners) within its portfolio.

We expect that this entire portfolio would run off by year-end 2020, so it is anticipated that PNC could comply with all of its contractual obligations regarding funding of unfunded capital commitments and still meet the conformance requirements of Dodd-Frank if the Board were to grant extensions for the conformance periods for these illiquid funds. (Being required to sell its LP or LLC interests in the secondary markets before their termination date would involve, as fully discussed in the Comment Letters, significant discounts to net asset value.)

Sincerely,

James S. Keller

cc: Michael D. Coldwell
Supervisory Examiner
Federal Reserve Bank of Cleveland

Peter Chiste
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The PNC Financial Services Group, Inc.