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National Association of Federally-Insured Credit Unions

Carrie R. Hunt
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Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Stuart Feldstein
Director
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Interpretation of Section 203 of the *Economic Growth, Regulatory Relief, and Consumer Protection Act*

Dear Sirs/Madams:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today to urge the Agencies to interpret section 13(h)(1) of the *Bank Holding Company Act of 1956* (BHC Act) (12. U.S.C. 1851(h)(1))—also known as the Volcker Rule—in accordance with Congressional intent. Specifically, the Agencies should recognize that section 13(h)(1)(B) was never meant to afford the largest and most complex banks relief from critically important safety and soundness regulations.

Section 203 of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA) amended the BHC Act to provide Volcker Rule relief to community banks that do not have and are not controlled by a company that has (i) more than $10 billion in total consolidated assets; ***and*** (ii) total trading assets and trading liabilities that are more than 5

percent of total consolidated assets.[1] Amended section 13(h)(1)(B) of the BHC Act does not give rise to any possible inference that Congress intended to use a different conjunctive element in the above definition, or meant to extend Volcker Rule relief to large banks, as some have suggested. The official summary for the EGRRCPA states that "[t]he bill amends the [BHC Act] to exempt from the "Volcker Rule" banks with: (1) total assets valued at less than $10 billion, and (2) trading assets and liabilities comprising not more than 5% of total assets."[2] A report issued in June 2018 by the Congressional Research Service affirms this understanding.[3] As further evidence, the Agencies' rulemaking agendas include an item titled "Volcker Community Bank Relief and Removal of Name Restriction." The abstracts provided for this rulemaking are all the same, and each states unequivocally that "Section 203 [of the EGRRCPA] exempts from the Volcker Rule banks with: (1) Total assets valued at less than $10 billion, ***and*** (2) trading assets and liabilities comprising not more than 5% of total assets"[4] (emphasis added).

The intended meaning of section 13(h)(1)(B) is not altered by the inclusion of double negatives, as some have claimed, and there is no reasonable interpretation of the statute, its context, or any of the supporting evidence that can justify flipping the word "and" in section 13(h)(1)(B)(i) to "or." While creative legal interpretations devised by the largest banks may serve to illustrate the need for more careful legislative drafting, they should not entice the Agencies to disregard Congressional intent.

As NAFCU has stated in previous letters to the Agencies, the Volcker Rule is a critical reform that emerged from the financial crisis which addresses, among other things, the riskiest of all investment behaviors—investing in private equity or hedge funds using a bank's own accounts for the bank's own benefit. The infamy of individual traders like the "London Whale" demonstrates the destabilizing effect of proprietary trading and the risk of substantial loss when such activity is not closely supervised.

Loosening requirements under section 13 of the BHC Act would revive the risky trading practices that contributed to the financial crisis and fundamentally degrade the stability and liquidity of capital markets. Accordingly, NAFCU urges the Agencies to interpret section 13(h)(1) of the BHC Act the way Congress intended. If you have any questions or would like us to provide you with further information, please do not hesitate to contact me or Andrew Morris, Senior Counsel for Research and Policy, at amorris@nafcu.org or (703) 842-2266.

Sincerely,

Carrie R. Hunt

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Executive Vice President of Government Affairs and General Counsel

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[1] 12. U.S.C. 1851(h)(1)(B).
[2] https://www.congress.gov/bill/115th-congress/senate-bill/2155
[3] Congressional Research Service, Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues, 16-17 (June 6, 2018), available at https://fas.org/sgp/crs/misc/R45073.pdf.
[4] *See generally*, FDIC RIN: 3064-AE88, SEC RIN: 3235-AM43, TREAS/OCC RIN: 1557-AE47.