CALIFORNIA
BANKERS
ASSOCIATION

April 9, 2019

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

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

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: **Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds – Docket No. OCC-2018-0029 (OCC); Docket No. R-1643, RIN 7100-AF33 (Federal Reserve); RIN 3064-AE88 (FDIC); File Number S7-14-18 (SEC); RIN 3038-AE72 (CFTC)**

Ladies and Gentlemen:

The California Bankers Association (CBA) welcomes the opportunity to provide comments to the five federal regulatory agencies (Agencies) responsible for issuing the regulations that implement Section 619 of the Dodd-Frank Act, codified as Section 13 of the Bank Holding Company Act of 1956, as amended (Volcker Rule). The Agencies' solicitation of public comment, to which this letter responds, is referred to herein as the "Proposal."

CBA has reviewed the comments set forth in the American Bankers Association's (ABA) letter of March 11, 2019 (copy attached), and supports and concurs with each of them. CBA would highlight the following issues in particular.

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A division of Western Bankers Association wba

The Community Bank Exclusion

CBA joins the ABA in recommending that the wording used to describe the Community Bank Exclusion mimic the language used in Section 203 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The Proposal states that, in order to determine whether an institution qualifies for the Community Bank Exclusion (i.e., whether trading assets and liabilities do not exceed five percent of the institution's total consolidated assets), it will use "available information." CBA concurs with the ABA in suggesting that the Agencies' determination be based on an institution's "most recent applicable regulatory filing," which is the language used in EGRRCPA. This more precise wording lends predictability with respect to whether an institution will qualify for the Community Bank Exclusion, and mitigates the possibility that data not provided by the institution, and that may vary from the information provided by the institution, will be considered by the Agencies.

Self-Executing Nature of Sections 203 of EGRRCPA

The ABA has requested that the Agencies confirm that Sections 203 of EGRRCPA are self-executing, and that no further action by the Agencies is required for the Community Bank Exclusion, among other provisions, is required for those provisions to be given effect. CBA joins this request, so that its member institutions may confidently rely on the provisions of Section 203 of EGRRCPA when determining whether they qualify for the Community Bank Exclusion.

Thank you for the opportunity to comment on the Proposal regarding implementation of the Volcker Rule. If you have any questions, please do not hesitate to contact me at mopich@westernbankers.com.

Very truly yours,

CALIFORNIA BANKERS ASSOCIATION

Martha Evensen Opich
Vice President and Association Counsel

Enclosure

American Bankers Association
Building Success. Together.

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March 11, 2019

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Ladies and Gentlemen:

The American Bankers Association[1] (ABA) appreciates the opportunity to provide comments to the five federal regulatory agencies (Agencies) responsible for issuing the rules (Regulation) that implement Section 619 of the Dodd-Frank Act, codified as Section 13 of the Bank Holding Company Act of 1956, as amended (Volcker Rule, or Rule). The Agencies are soliciting public comment on proposed amendments to the Regulation (Proposal) that are intended to be consistent with the statutory amendments made pursuant to sections 203 and 204 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which was enacted into law in 2018.[2]

[1] The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $14 trillion in deposits, and extend more than $10 trillion in loans. Learn more at www.aba.com.
[2] *See* 84 *Fed. Reg.* 2778 (2019). *See also* 12 U.S.C. § 1851 (Volcker Rule).

The Proposal would align the Regulation with the statutory amendments, and thereby—

(1) exclude from the Volcker Rule an insured depository institution that has both (i) total consolidated assets equal to $10 billion or less, and (ii) total trading assets and liabilities of no more than five percent of total consolidated assets (Community Bank Exclusion or Exclusion);[3] and

(2) ease the restrictions on the naming of a covered fund (*i.e.*, hedge fund or private equity fund) by allowing an investment adviser that is a banking entity to "share the same name or a variation of the same name" with the fund, provided: (a) the adviser is not (i) an insured depository institution, (ii) a company that controls an insured depository institution, or (iii) a company that is treated as a bank holding company (BHC) under the International Banking Act (IBA);[4] (b) the adviser does not share the same name, or variation of the same name with any such entities; and (c) the name does not contain the word "bank" (Name-Sharing Provision).[5]

We commend the Agencies for their efforts to harmonize the Regulation's requirements with the Volcker Rule amendments of the EGRRCPA, thereby providing compliance guidance and certainty for banking entities. We would request, however, that the Agencies clarify the Proposal in three respects.

First, in describing the Community Bank Exclusion, the Agencies state that they would "expect to use *available information*, including information reported on regulatory reporting forms available to each Agency, with respect to whether financial institutions qualify for the [E]xclusion."[6] Section 203 of the EGRRCPA, however, states that with respect to determining whether total trading assets and trading liabilities fall within the Exclusion, such determination shall be made by what is "reported on the *most recent applicable regulatory filing* filed by the institution."[7] We request, therefore, that the Agencies clarify that, for purposes of determining whether trading assets and liabilities do not exceed five percent of a banking entity's total consolidated assets in accordance with the amended Volcker Rule, the Agencies limit their review to the banking entity's "most recent applicable regulatory filing," rather than engage in a review of all "available information," which may or may not be known to the banking entity, and which could possibly be at variance with the trading assets and/or liabilities figure(s) reported in the most recent applicable regulatory filing. For example, commercial banks should be able to rely on trading assets plus liabilities as reported in the most recently filed schedule RC-D. In particular, regulators should make it clear that securities held in an Available for Sale capacity do not count toward trading assets plus liabilities. This clarification will permit a banking entity to know with confidence whether it will fall within the terms of the Community Bank Exclusion.

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[3] *See* 12 U.S.C. § 1851(h)(1). Any company controlling such insured depository institution also must satisfy these requirements in order for the insured depository institution to rely on the Exclusion. *See id.*

[4] *See* 12 U.S.C. § 3101 *et seq.*

[5] *See* 12 U.S.C. § 1851(d)(1)(G)(vi).

[6] 84 *Fed. Reg.* at 2778, 2781.

[7] 12 U.S.C. § 1851(h)(1)(B).

Second, with respect to the Name-Sharing Provision, the Agencies ask whether the Proposal provides sufficient clarity for a banking entity to determine whether a covered fund is permitted to share the same name or variation of the same name with an affiliated banking entity.[8] For those banking entities with non-U.S. operations, there are instances in which a banking entity's affiliated investment adviser, which is headquartered or located in a foreign jurisdiction, may be required under the foreign jurisdiction's local law, or directed by the local regulators for the purpose of investor protection, to share the same name (or variation thereof) with covered funds that it advises.[9] In order to provide compliance certainty, we propose that the Agencies interpret the Name-Sharing Provision also to allow a banking entity to share the "same name or variation of the same name" with the covered fund if required by a foreign jurisdiction's applicable local law or as directed by local regulators. This exclusion would further the policy goal of avoiding extraterritorial application of the Volcker Rule where a foreign jurisdiction's law otherwise requires or directs this arrangement.[10]

Third, we request that the Agencies confirm that sections 203 and 204 of the EGRRCPA are self-executing; *i.e.*, that no action of the Agencies would be required for the Community Bank Exclusion and Name-Sharing Provision to go into full force and effect. This apparently was the position taken by the Agencies shortly after the EGRRCPA's enactment in May 2018.[11] Recognition of the self-executing nature of these provisions would allow affected banking entities to continue to rely on section 203 and 204 without having to wait for the Agencies formally to align the Regulation with the Volcker Rule amendments.

We understand that the Agencies are in the process of finalizing the larger, comprehensive Volcker Rule regulatory reform proposal.[12] We believe that the proposed Accounting Test is considerably overbroad and captures far more assets than intended by the Volcker Rule, and therefore, it is inconsistent with the Volcker Rule reforms discussed herein. It further conflicts with the Agencies' expressed intent to simplify and tailor the Volcker Rule. Relating the Volcker Rule's regulatory requirements to a banking entity's level of involvement in Volcker Rule-regulated trading and covered fund activities (rather than tying these requirements reflexively to asset size) would be a major improvement in the administration of the law, focusing it better on its statutory purposes, for which such reforms as the Community Bank Exception is similarly consistent. We look forward to the forthcoming reforms that will meaningfully rightsize and improve the Volcker Rule's regulatory framework.

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[8] *See* 84 *Fed. Reg.* at 2781.

[9] We believe that the risk of possible investor perception that the sponsoring banking entity will "bail out" the covered fund is mitigated by the written disclosure requirements under the permitted activity exceptions. *See* 12 C.F.R. §44.11(a)(8) (2019) (OCC Volcker Rule regulation). These disclosures which, among other things, require that the banking entity clearly disclose its role in sponsoring or providing services to the fund and that the ownership interests are not guaranteed by the banking entity, serve to avoid possible confusion by investors about the role and obligations of the banking entity. *See id.*

[10] The Agencies, moreover, could invoke their exemptive authority under section (d)(1)(J) of the Volcker Rule (12 U.S.C. § 1851(d)(1)(J)) to authorize this exclusion by limiting its application to foreign jurisdictions.

[11] *See* 83 *Fed. Reg.* 33,432, 33,434 (2018) ("The [EGRRCPA] amendments took effect upon enactment, however, and in the interim between enactment and the adoption of implementing regulations, the Agencies will not enforce the 2013 final rule in a manner inconsistent with the amendments to section 13 of the BHC Act [Volcker Rule] with respect to institutions excluded by the statute and with respect to the naming restrictions for covered funds.")

[12] *See* 83 *Fed. Reg.* 33,432, *supra*.

Thank you for your consideration of our views and recommendations. If you have any questions or require any additional information, please do not hesitate to contact the undersigned at 202-663-5479 (tkeehan@aba.com).

Sincerely,

Timothy E. Keehan

Timothy E. Keehan
Vice President & Senior Counsel