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April 1, 2020

Ann E. Misback, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1694; RIN 7100-AF70

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
File No. S7–02–20; RIN 3235-AM70

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN: 3064-AF17

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2020-0002; RIN 1557-AE67

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
115 21st Street NW
Washington, DC 20581
RIN: 3038-AE93

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("**PNC**") appreciates the opportunity to comment on the notice of proposed rulemaking (the "**Proposed Rule**")[1] issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Securities and Exchange Commission and the Commodity Futures Trading Commission regarding proposed amendments to the covered funds provisions of the current rules (the "**Current Rule**") implementing Section 13 of the Bank Holding Company Act (the "**BHC Act**"), commonly referred to as the "**Volcker Rule**."[2]

[1] 85 Fed. Reg. 12120 (Feb. 28, 2020).
[2] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5535 (Jan. 31, 2014); *see also* Prohibitions and Restrictions on

We welcome the agencies' continued efforts to tailor and streamline the Current Rule and provide clarity on the types of relationships with privately offered funds that are permissible under the Volcker Rule. In particular, we believe that the proposed changes to the covered fund provisions of the Current Rule would help:

- Clarify the ability of banking entities to provide traditional banking services to their customers, including permitted financing, investment advisory, investment management, and treasury management services;
- Facilitate the ability of banks to acquire investment-grade and marketable bonds issued by privately offered vehicles for their investment securities portfolios consistent with applicable laws; and
- Reduce compliance burdens and uncertainty relating to determining whether an excluded vehicle is a covered fund.

While we support a number of the agencies' proposed changes to the covered fund provisions, we have identified – as addressed further below – a few areas where further refinement is needed to reduce potential for customer confusion, legal uncertainty, and unnecessary compliance burdens. We believe these concerns can be addressed easily by the agencies in a final rule with only a few clarifications.

The comments set forth in this letter address the areas of particular interest and concern to PNC. We also appreciate the agencies' adoption of a number of new exclusions from the definition of covered fund, including exclusions for credit funds, venture capital funds, and client facilitation vehicles, and express our support for the comments on these funds and on other issues relating to the Proposed Rule set forth in the letters of the Securities Industry and Financial Markets Association, the Bank Policy Institute, and American Bankers Association.

I. Executive Summary

The Proposed Rule streamlines and clarifies the covered fund provisions of the Current Rule in a manner that furthers congressional intent of prohibiting banking entities from engaging in impermissible proprietary trading and having impermissible relationships with covered funds. The proposed changes will help banking entities support the needs of their customers and make sound investments that are part of the business of banking in accordance with applicable laws. At the same time, by expanding the list of exclusions from the definition of covered fund – many of which we believe are clarifying in nature because the underlying vehicles should not be covered funds under the Current Rule – the proposed changes will help reduce unnecessary compliance burdens associated with the challenges banking entities have encountered for the past

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Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 84 Fed. Reg. 61974 (Nov. 14, 2019).

six years in determining whether a privately offered vehicle qualifies as a covered fund and a bond qualifies as a prohibited ownership interest.[3]

We address below some of the specific changes and clarifications to the Current Rule that we support. For ease of reference, our main suggestions for further improvement are as follows:

- **Ownership Interest** – We encourage the agencies to permit creditors to exercise rights to remove an investment manager for cause or to vote for a nominated replacement manager upon an investment manager's resignation or removal, regardless of whether or not an event of default or acceleration event has occurred, without treating these rights as an ownership interest.

- **Loan Securitization Exclusion** – We ask that the agencies clarify that the five percent threshold of loan to non-loan assets, which we believe is set appropriately, only needs to be calculated at a single point in time and not on an ongoing basis, such as at the time of original issuance based on the relative size of the loans to non-loan assets in the pool or, in the alternative, at the time of purchase of the security.

- **Parallel and Employee Investments –** We support further changes to the Current Rule to address that employees and directors should not be required to provide services to a covered fund organized and offered by a banking entity in order to invest in the covered fund on their own initiative and with their own funds.

- **Family Wealth Management Vehicles –** We support the agencies' clarifying exclusion from the definition of covered fund, but would urge the agencies not to impose any of the conditions for organizing and offering a covered fund under §_.11 of the Current Rules on family wealth management vehicles to which a banking entity provides only investment advisory or management services or serves as a trustee. Family wealth management vehicles do not ordinarily involve an investment company, let alone a covered fund, and these requirements, in particular the disclosure requirements, will create unnecessary confusion for our customers and new compliance burdens for banking entities seeking to provide traditional banking services to family clients.

- **Super 23A –** We support the agencies' proposed changes to the prohibition on transactions between banking entities and their related covered funds under the so-called Super 23A prohibition given that it is appropriate to permit banking entities to enter into certain covered transactions with related covered funds in certain circumstances. We urge the agencies to further exempt from the Super

[3] We would expect that banking entities will continue to rely on an exclusion from the definition of covered fund as one of several options for complying with the covered fund prohibition, and would not treat existence of a clarifying exclusion as a determination that the vehicle is in fact an investment company that qualifies as a covered fund.

23A prohibition (i) lines of credit that are established and drawn on to support ACH credit transactions and (ii) certain other ordinary extensions of credit, subject to appropriate limits, to an advised or managed covered fund.

II. Discussion

A. Tailoring of Ownership Interest Definition

The Current Rule adopts an overly broad definition of ownership interest that has imposed considerable regulatory uncertainty as to what types of relationships with covered funds are prohibited. We do not believe that Congress intended to restrict the ability of banking entities to extend loans to third-party covered funds or purchase senior debt instruments issued by covered funds. For these reasons, we support the agencies' proposal to amend the definition of ownership interest to clarify that an ownership interest does not include (i) a creditor's rights to remove an investment manager for cause or vote on a nominated replacement manager in the event of default, or (ii) *a bona fide* senior loan or senior debt instrument.

1. Creditors' Remedies to Remove Investment Managers for Cause or Vote on Nominated Replacement Managers

The Proposed Rule amends the list of characteristics of the "other similar interest" prong of ownership interest to clarify that creditors' rights to exercise certain remedies upon the occurrence of an event of default or an acceleration event do not involve an ownership interest. Specifically, the Proposed Rule provides that, if an event of default or acceleration event has occurred, a creditor's right to participate in the removal of an investment manager for cause or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal does not constitute an ownership interest.

We believe this change is reasonable because it protects traditional creditors' rights that are not similar to an equity or partnership interest in a covered fund. We urge the agencies to expand further the exclusion to permit creditors to exercise rights to remove an investment manager for cause or to vote for a nominated replacement manager upon an investment manager's resignation or removal, regardless of whether or not an event of default or acceleration event has occurred.

2. Safe Harbor for Ownership of *Bona Fide* Senior Loans and Senior Debt Instruments

The Proposed Rule provides a safe harbor from the definition of ownership interest for senior loans and senior debt instruments that do not have economic features associated with equity. To qualify for the safe harbor, the holders of these interests may not have, among other things, the right to receive a share of income, gains or profits of the covered fund, but may receive (i) interest at a stated interest rate and certain fees not determined by reference to the performance of the underlying assets of the covered fund, and (ii) fixed principal payments on or before a maturity date and certain prepayment premiums.

We believe an exclusion for senior debt interests and senior loan interests from the definition of ownership interest is appropriate given that these interests are not similar to an equity or partnership interest and, therefore, should not have been deemed an ownership interest in the first place. Moreover, this safe harbor will greatly reduce the compliance burdens of banks acquiring qualifying bonds in privately offered funds for the banks' investment securities portfolio by obviating their need to complete complicated and at times costly legal analyses – often with the assistance of outside legal counsel – of the covered fund status of a privately offered fund.

We generally support the proposed set of characteristics that would define a senior loan or senior debt interests but for one requirement. We urge the agencies to clarify that the safe harbor covers senior loans and senior debt securities that include acceleration or amortization provisions with respect to repayment of principal. These provisions do not give the holder any equity-like rights.

B. **Expansion of Loan Securitization Exclusion**

The Proposed Rule would expand the assets a loan securitization may hold to include non-loan assets equal to or no more than five percent of the loan securitization's total assets. The Current Rule limits the loan securitization exclusion to vehicles backed exclusively by loans and not any securities or derivatives other than cash equivalents and foreign exchange and interest rate derivatives.

We support the agencies' proposal to modify the loan securitization exclusion. We believe that the five percent threshold for non-loan assets is appropriate. We also urge the agencies to clarify that the threshold of loan to non-loan assets only needs to be calculated at a single point in time and not on an ongoing basis, such as at the time of original issuance based on the relative size of the loans to non-loan assets in the pool or, in the alternative, at the time of purchase of the security.

The Proposed Rule would also codify existing agency guidance providing that servicing assets held by a loan securitization vehicle may include assets other than securities, such as mortgage insurance policies supporting the mortgages in the pool, and defining cash equivalents. We support the agencies' efforts to codify existing guidance in the text of the final rule.

C. **Expansion of Small Business Investment Company ("SBIC") Exclusion**

The Proposed Rule clarifies that an SBIC remains eligible for the existing exclusion from the definition of covered fund in the event that the SBIC voluntarily surrenders its license during a wind down period provided that the SBIC does not make any new investments after surrendering its license. We believe this change is appropriate because we have found that

SBICs may need to give up their licenses late in life and/or during the course of liquidating their holdings.

D. **Clarification on Parallel Investments**

We support the agencies' proposal to clarify that banking entities and their affiliates may make parallel and co-investments under applicable laws alongside a covered fund organized and offered by the banking entity, and that these investments will not count towards the investment limits under the final rule relating to organizing and offering the funds. We believe that the guidance in the preamble to the Proposed Rule indicating that banking entities may have investment policies, arrangements or agreements to invest alongside a covered fund in all or substantially all of the investments opportunities made available by the covered fund to other investors is helpful and clear.

We also believe that for the most part the Current Rule adequately addresses employee and director investments in or alongside a covered fund. Employee and director investments in a covered fund should not be attributed to a banking entity if, in accordance with the Current Rule, the banking entity did not finance the employee's or director's investment.

We urge the agencies also to clarify that employees and directors should not be required, as set forth in the Current Rule, to provide services to a covered fund organized and offered by a banking entity in order to invest in the covered fund with their own funds. This requirement is not necessary to prevent evasion of the Current Rule, including the investment limits. If employees and directors invest in a covered fund – whether a covered fund organized and offered by a banking entity or a third party fund – on their own initiative and with their own resources, the investment should not be attributed to the banking entity.

E. **Public Welfare Investment Funds Exclusion**

While we believe that the current exclusion of public welfare investments from the definition of covered fund is free of any interpretive issues, we support any guidance the agencies would wish to provide in the preamble to the final rule to address any questions banking entities may have raised relating to the treatment of their investments in public welfare investments, including direct investments in individual projects or in multi-investor funds backed primarily by public welfare investments.

The Current Rule excludes an issuer the business of which is designed primarily to promote the public welfare of the type permitted under 12 U.S.C. § 24, including the welfare of low- and moderate-income ("LMI") communities or families. Since the Volcker Rule regulations were first adopted in 2014, banking entities have commonly relied on this exclusion, both in terms of their investments in and sponsorship of public welfare investment funds, to conclude that investments that primarily benefit the public welfare consistent with the agencies' public welfare investment regulations do not involve an investment in a covered fund. This has included both direct investments in individual projects as well as investments in multi-investor funds that primarily benefit LMI individuals, LMI areas, areas targeted by a governmental entity for redevelopment, and investments that would receive consideration under the banking agencies' respective Community Reinvestment Act ("**CRA**") regulations as a qualified investment.

The agencies have solicited comments on whether any changes are needed to clarify that all permissible public welfare investments are excluded, including those made through fund structures, such as funds that invest exclusively in SBICs that are CRA qualified investments. As noted, we believe that all CRA qualified investments constitute, by operation of current public welfare investment rules, permissible public welfare investments and, in turn, are excluded from the definition of covered fund under the Current Rule. While we do not believe it is necessary, we welcome any steps the agencies would like to take to further clarify this treatment of CRA qualified investments in the final rule.

The agencies have solicited comments on whether they should expressly exclude opportunity zone funds from the definition of covered fund. We believe that investments in opportunity zones should be of the type primarily intended to promote the public welfare of LMI areas. For this reason, we do not believe it is necessary to also expressly exclude opportunity zone funds from the definition of covered fund. If an opportunity zone fund qualifies as a public welfare investment, either because it is a CRA qualified investment or an investment that primarily benefits LMI individuals or areas, then the fund would qualify for the existing exclusion from covered fund.

F. **New Family Wealth Management Vehicle**

We appreciate the agencies' efforts to clarify the treatment of family wealth management vehicles under the Volcker Rule. We believe that an exclusion for a family wealth management vehicle that constitutes a covered fund is appropriate. However, given that family wealth management vehicles in the ordinary course would not constitute a covered fund, we are concerned that the exclusion and the requirements under the proposed exclusion will impose additional compliance obligations on banking entities providing services to family wealth management vehicles, including those that are not covered funds in the first instance. Moreover, we are concerned that some of these requirements may cause confusion for our customers.

Family offices and their wealth management vehicles ordinarily should not be deemed an investment company in the first instance and, therefore, would not need to rely on an exclusion from the definition of covered fund under the Volcker Rule. A family office is not a commercial enterprise and the only participants are members of the family. The sole purpose of any investment vehicle created by a family office is to more efficiently manage the assets of the family from an investment, tax, or limited liability perspective. Family offices and their wealth management vehicles do not hold themselves out to the public as being engaged primarily in the business of investing, reinvesting, or trading in securities. Family offices traditionally have turned to banks to provide a number of services, including serving as a trustee of a family trust, giving investment advice, providing custody and related settlement services, and extending credit. Banks are not involved in the organizing and offering of family wealth management vehicles to members of the family and do not retain any ownership interest in such vehicles.

While we believe that a family wealth management vehicle generally would not constitute an investment company that qualifies as a covered fund in the first place, we appreciate the agencies' proposal to adopt a clarifying exclusion for family wealth management vehicles from the definition of covered fund. The exclusion helps reduce the potential for legal uncertainty regarding the status of wealth management vehicles. Nevertheless, existence of the exclusion could be confused with the conclusion that each family wealth management vehicle is in fact a covered fund requiring reliance on the exclusion. Accordingly, we would urge the agencies to clarify that a family wealth management vehicle, such as an ordinary trust, that as a matter of legal interpretation does not constitute a covered fund in the first place is not required to rely on an exclusion from the definition of covered fund and demonstrate compliance with the requirements thereunder.

In that spirit, we propose two changes to the proposed exclusion for family wealth management vehicles. First, to better accommodate the range of potential wealth management vehicles, we recommend the agencies not limit reliance on the exclusion based on any set number of closely related individuals in a family. Setting the number at 3 as in the Proposed Rule, or even 10, is arbitrary and would serve to discriminate against larger families. Nevertheless, at a minimum, the agencies should expand the scope of the exclusion to allow at least up to 10 closely related persons to invest in a qualifying wealth management vehicle.

Second, we do not believe it is appropriate, or necessary to prevent potential evasion of the Volcker Rule, to impose any requirements on an excluded family wealth vehicle as if the vehicle were a covered fund. As noted above, banks do not organize and offer family wealth vehicles nor retain an ownership interest in such vehicles as they might do with a covered fund that they are organizing and offering under the asset management exemption under the Volcker Rule. Accordingly, it is not reasonable to impose the requirements for organizing and offering a covered fund under §_.11 of the Current Rule on banking entities in connection with their provision of traditional banking services to a family wealth management vehicles. This is particularly the case where the banking entity only provides investment advisory, investment management, or trustee services to a family wealth management vehicle.

In particular, we are concerned that requiring banking entities to provide the relevant disclosures under §_.11 to family wealth management vehicles will create unnecessary customer confusion. Banking entities ordinarily do not hold an ownership interest in a family wealth management vehicle and, therefore, disclosing to the "investor" (potentially the beneficiary of the trust) information relating to an ownership interest in the vehicle will only lead to unnecessary confusion. Likewise, banking entities providing advisory services to such a vehicle do not ordinarily control the underlying documentation of these vehicles and they typically do not have offering documents. For these reasons, we urge the agencies to eliminate the disclosure requirement or, at a minimum, to allow a banking entity to customize the disclosure to the services provided and to provide the disclosure only to the family wealth vehicle and not the beneficiaries of the trust.

G. **Super 23 A Prohibition**

We support the agencies' proposed changes to the prohibition on transactions between banking entities and their related covered funds under the so-called Super 23A prohibition based on their recognition that under certain circumstances it would be appropriate to permit banking entities to enter into certain covered transactions with related covered funds.

We support the agencies' proposal to permit a banking entity to engage in covered transactions with a related covered fund that would be exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition under section 23A of the Federal Reserve Act. Specifically, these transactions would include (i) exemptions for intraday extensions of credit, (ii) purchases of an extension of credit subject to a repurchase agreement, and (iii) transactions secured by cash or U.S. government securities. We agree that these transactions do not present significant risk of loss to the banking entity.

We also support the agencies' proposal to incorporate exemptions into the Super 23A prohibition for short-term extensions of credit to, and purchases of assets from, a related covered fund, including extensions of credit or purchase of assets made in the ordinary course of business in connection with payment transactions, securities, derivatives, or future clearing, or settlement services and extensions of credit required to be repaid, sold, or terminated within five business days after origination. These short-term extensions of credit would need to meet the same requirements applicable to intraday extensions of credit under the Federal Reserve Board's Regulation W. We believe that the five days limitation is an appropriate period of time to allow for settlement of the credit, including in the context of transactions such as overdrafts or ACH credit transactions that may not always be concluded in the shorter time industry settlement time for financial instruments. We would also encourage the agencies to confirm that ACH Credit transactions will qualify for the proposed short-term credit extension exemption.

We would urge the agencies to adopt an additional exemption from the Super 23A prohibition for other ordinary extensions of credit by a banking entity to a covered fund provided that the banking entity does not organize and offer or retain an ownership interest in the covered fund. For example, this may include ordinary extensions of credit within the quantitative and qualitative limits under Regulation W or extensions of credit to covered funds to which the banking entity only serves as an investment advisor, investment manager, or trustee. We do not believe that these types of ordinary extensions of credit raise the types of safety and soundness concerns Congress intended to address with Super 23A, including increased risk to banking entities or incentives for bailing out a covered fund.

III. **Conclusion**

Thank you for the opportunity to comment on the Proposed Rule. We share the agencies' view that there are significant opportunities to improve the Current Rule to align better with the underlying purpose of the Volcker Rule. We appreciate the efforts of the agencies to strive to streamline and clarify the covered fund provisions of the Current Rule.

If you have any questions regarding the content of this letter or would like more information on the same, please do not hesitate to contact me.

Sincerely,

Kieran J. Fallon