The Clearing House

December 30, 2010

Via Electronic Delivery

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

Attention: Comments

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

Dear Ms. Johnson:

The Clearing House Association L.L.C. ("The Clearing House"),[1] an association of major commercial banks, 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

1 Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing – through regulatory comment letters, amicus briefs and white papers – the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer and check-image payments made in the U.S. *See* The Clearing House's web page at www.theclearinghouse.org for additional information.

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").

implement the conformance periods 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.[3]

Dodd-Frank generally requires banking entities to conform their activities and investments to the Volcker Rule prohibitions by two years after the effective date of the Volcker Rule, which is the earlier of (i) one year after the date of the issuance of final rules under Section 13(b) of the BHC Act and (ii) two years after Dodd-Frank's enactment date of July 21, 2010. Dodd-Frank also provides, however, for two types of extensions of this general conformance period in order to allow banking entities to transition their operations in an orderly manner and avoid undue loss. First, Section 13(c)(2) of the BHC Act enables the Board to grant up to three one-year conformance period extensions (the "General Extensions"). Second, Section 13(c)(3) of the BHC Act enables the Board to extend the conformance period for up to an additional five years (the "Special Extension") for investments in private equity funds and hedge funds that qualify as "illiquid funds."[4]

As the Board undoubtedly recognizes, the adoption of conformance rules that avoid serious losses and other damage to banking entities, as well as to other constituencies, is of critical importance. The Clearing House respectfully submits that the Proposed Rule's treatment of the General Extensions and, even more so, the Special Extension must be significantly revised to prevent these consequences.

EXECUTIVE SUMMARY

The Clearing House believes that the Proposed Rule severely limits the availability of the Special Extension for banking entities' investments in illiquid funds, which is contrary to Congressional intent and will raise legal and prudential concerns for banking entities. Accordingly, in Section I below, The Clearing House recommends certain changes to the definitions in the Proposed Rule to allow the Special Extension for banking entities' investments in illiquid funds to achieve its statutory purpose, taking into account how funds operate in practice. Specifically, we believe that:

- The definition of "contractual obligation" is too narrow to provide a meaningful exemption for banking entities' investments in illiquid funds, and should be revised to recognize the range of a fund sponsor's obligations and the practical impediments posed by the "reasonable best efforts" requirement.

- The "principally invested" test should be a one-time test.

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3 These prohibitions are commonly known as the "Volcker Rule."

4 We will refer to private equity funds and hedge funds as "funds" throughout this letter.

- The Board should retain flexibility and discretion in applying the definition of "illiquid fund."

- The definition of "contractually committed to principally invest" should recognize the breadth of a fund's various obligations, should require contractual commitment only during a fund's investment period and should take into account the standard, expected progression of a fund's dispositions of its assets.

- The "principally invested" test sets an excessively high threshold.

- The definition of "illiquid assets" should be more flexible, allowing for a broader range of circumstances, including contractual restrictions on transfer, which could impact liquidity. The definition also requires clarification of its application to funds of funds.

- Part of the definition of "liquid asset" is overbroad and may capture genuinely illiquid assets.

In Section II below, our recommendations address the procedures in the Proposed Rule relating to extensions of the conformance periods as they affect all funds (whether within the definition of "illiquid fund" or not). Specifically, we believe that:

- The Proposed Rule should be clarified to allow the Board to grant extensions for investments, activities and commitments commenced in good faith after the effective date of Dodd-Frank.

- The Board should clarify a number of procedural aspects of the Proposed Rule.

- The Board should clarify that General Extensions apply to activities as well as investments.

- The Board should clarify that employees of banking entities will not be required to divest or terminate investments and commitments made prior to effectiveness of the Volcker Rule.

- The Board should expand its list of factors that will be considered in its determinations of whether to grant extension requests.

We submit that the best approach for the Board to accommodate the multiple objectives of the conformance period[5] and provide essential fairness is to avoid unduly

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[5] 75 Fed. Reg. at 72743 ("the purpose...is to minimize disruption of existing investment in illiquid funds and permit banking entities to fulfill existing obligations to illiquid funds while steadily moving banking entities toward conformance...").

restrictive definitions and instead rely on the analysis of individual extension requests. As set forth in the release concerning the Proposed Rule (the "Proposed Rule Release"), extension requests must provide substantial facts and analysis, including the reasons why the extension should be granted, risk to the banking entity, market conditions, conflicts of interest and a conformance plan.[6] This information will enable the Board to determine the most appropriate outcome.

We recognize that the Board has a statutory mandate to adopt a rule implementing the conformance period by January 21, 2011, and we appreciate that the Board is endeavoring to structure the Proposed Rule on transition while the rules implementing the substantive prohibitions have not yet even been proposed. Under such circumstances, it is difficult for The Clearing House to comment in a truly informed manner on a rule implementing the conformance period, and even more difficult for the Board to adopt such a rule. The Clearing House accordingly requests that the Board adopt a conformance rule on a temporary basis and initiate a new comment process when the substantive rules are adopted, with reasonable transition periods to allow for any further changes in activities or investments that banking entities may need to make.

DETAILED COMMENTS

I. The Approach Taken in the Proposed Rule Severely Limits the Availability of the Special Extension for Banking Entities' Investments in Illiquid Funds to an Extent that is Contrary to Congressional Intent and Will Raise Legal and Prudential Concerns for Banking Entities

A. Introduction

We respectfully submit that the Proposed Rule largely vitiates the special Congressional exemption for banking entities' investments in illiquid funds. If the Proposed Rule is not modified, very few, if any, funds are likely to satisfy the definition of "illiquid funds" and therefore be eligible for the Special Extension. Many fund investments will therefore have to be sold prematurely and at potentially deeply discounted prices.

Private equity funds, which are designed to make and manage illiquid investments over a fund life cycle that typically extends for many years, do not generally allow transfer or early redemption of fund interests, and the limited secondary market for fund interests is both shallow and illiquid. During the most recent two-year period for which data is available, the unweighted average discount on sales of interests in private equity funds has been approximately 37%.[7] Moreover, if most or many banking entities with investments in

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6 75 Fed. Reg. at 72743.

7 Although the financial crisis has abated, private equity interests continue to be sold at a sharp discount. In the second half of 2008, the average high and median bids on private equity interests reflected a discount of approximately 39% and 45%, respectively. During the first half of 2009, average high and median bids on such interests reflected discounts of approximately 59% and 65%, respectively. During

illiquid funds were forced to sell those investments at the same time by a cramped interpretation of the Special Extension, there would be a severe distortion of the normal demand-supply equation. Requiring banking entities to inundate an already-illiquid market with sales of this volume and magnitude would create further downward pressure on prices. Potential buyers also would know that banking entities must sell, further depressing prices. The loss is likely to be especially pronounced for large fund interests because there would be few remaining parties with both the legal authority (in light of the Volcker Rule) and the resources to buy such interests.

The aggregate downward impact of the factors described above on the market for interests in private equity funds would give rise to adverse prudential considerations. We believe that this result should be of concern to the Board, and its relevance is consistent both with Congress' express concern in the Volcker Rule about safety and soundness[8] and other approaches that the Board has taken in the Proposed Rule.[9]

If the Special Extension is not available, banking entities that are simply investors in funds may have no option other than a forced sale at a distressed price. They have no ability to require an entity acting as a general partner, manager, managing member or in a similar capacity for a fund (any of the foregoing, a "sponsor"), or a fund itself, to resolve the banking entity's divestiture problem in some other way.

Banking entities that are sponsors of funds as well as investors may have additional theoretical options, but these are likely to be very limited in practice.[10] For example,

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the second half of 2009, average high and median bids reflected discounts of approximately 28% and 33%, respectively. In the first half of 2010, average high and median bids reflected a discount of approximately 21% and 25%, respectively. Cogent Partners, *Secondary Pricing Trends & Analysis*, July 2010, at 2.

8 *See* Volcker Rule Section 13(d)(2), requiring that any transaction, class of transactions or activities otherwise permitted under Section 13(d)(1) may not, *inter alia*, pose a threat to the safety and soundness of the relevant banking entity.

9 *See* Proposed Rule Sections 225.181(d)(1) and 225.182(d) and the related portions of the Proposed Rule Release, stating that the Board "would consider requests for an extension in light of all relevant facts and circumstances," including "the total exposure of the banking entity to the activity or investment and the risks that disposing of ... the investment or activity may pose to the banking entity or the financial stability of the United States." 75 Fed. Reg. at 72743. *See also* Proposed Rule Section 225.180(h) and the related portion of the Proposed Rule Release, stating that the Board has based portions of the "illiquid asset" definition on "existing standards in the Federal banking and securities laws that are designed to identify securities that are liquid and may be sold promptly at a price that is reasonably related to its fair value." 75 Fed. Reg. at 72744. Although this language relates to the liquidity of a fund's assets rather than the liquidity of banking entities' fund interests, we believe that the Board should take into account analogous considerations as they may impact banking entities' safety and soundness.

10 The banking entity could presumably bring its sponsorship into conformance with the Volcker Rule under Section 13(d)(1)(G) as long as the Board reaffirms, consistent with historical regulatory treatment under the BHC Act, that a customarily structured carried interest by a banking entity is not a form of "ownership interest" in a fund.

a sponsor could wind down a fund by causing it to distribute its assets in kind to investors, but only if this were permissible under both the fund documents and the contractual arrangements between the fund and the portfolio companies in which it has invested. Moreover, other fund investors may object because they do not want to hold the interests directly, may have no ability to manage a number of these interests, and may be legally prohibited from owning these interests. Both the banking entity and the other investors are likely to be further disadvantaged by this approach because they could not obtain the investor governance rights, registration rights and other contractual rights that were tied to the fund's original investment terms.

The other possible, and perhaps somewhat more likely option, is that a banking entity sponsor could accelerate the wind-down of the fund through sales of its assets and related cash distributions to investors, but this is likely to result in substantially lower returns than what would have been realized if the fund had been able to manage its investments to their optimal level and wind down the fund on its original schedule. Almost all the investments in portfolio companies are illiquid and could only be sold at sharply discounted prices. Moreover, in some cases, the shares or other ownership interests in a portfolio company could not be sold without the consent of the portfolio company because they are in a lock-up period, or are subject to other transfer restrictions requiring consent of co-investors in the portfolio company.

Substantial transfers of interests or accelerated winding down of funds, whether through distributions in kind or asset sales and related cash distributions, adversely affect not only banking entities but also the other investors in a fund. These other investors made their investment decision based not only on the fund's constituent documents but also on its offering documents and relied on the fact that the sponsor would be managing a fund and, in many cases, had invested a substantial amount of its own money on the same terms as the other investors. Investors expect that this commitment will continue beyond the initial investment in the fund, as the sponsor will be actively managing the fund's investments for many years. A sale of substantially all the sponsor's direct investment would reduce this alignment of interests between the sponsor and the other investors, and the complete exit of the sponsor would put the fund in the hands of a different management team altogether.[11]

Any of these divestiture or wind-down actions are likely to be reputationally damaging and could create the potential for litigation against the sponsor under a variety of contractual claims and other legal arguments. At the very least, these actions could seriously jeopardize the relationship between the sponsor and fund investors (as well as the portfolio companies and co-investors), many of which are otherwise clients of the banking entity, who

[11] Co-investors and lenders to the fund's portfolio companies have likewise often relied on the alignment of interests created by the significant equity interest in the fund when agreeing to invest in or alongside the fund or to extend credit to the portfolio companies in which the fund invests. Portfolio companies may also rely on the expertise and resources of the fund's sponsor. A fund's co-investors in a portfolio company rely on the reputation of the fund's sponsor and may not believe that a replacement sponsor would continue to serve as a source of capital and stability for the company. Finally, in some cases, lenders to a portfolio company rely on the sponsorship by the banking entity in making the loans.

would regard themselves as being harmed by the banking entity's actions. We believe that the conformance period in Dodd-Frank should be implemented to minimize these disruptions to fund investors and other affected parties and damage to banking entities.

B. Recommendations Regarding Certain Definitions Relating to Illiquid Funds

Under the Proposed Rule, a fund qualifies as an "illiquid fund" if it meets either the first or second alternative tests as of May 1, 2010 and meets the third, mandatory, test in the definition. The first alternative test is whether a fund "was principally invested in illiquid assets;" the second alternative test is whether a fund "was invested in, and contractually committed to principally invest in, illiquid assets;" the third, mandatory, test is whether a fund "makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets."[12] Moreover, the Board may extend the conformance period for a banking entity's investment in or capital contributions to an "illiquid fund" only if the acquisition or retention of a banking entity's ownership interest or the provision of additional capital is necessary to fulfill a "contractual obligation."

The current, highly restrictive, scope of the Special Extension for "illiquid funds" is fundamentally determined by the Proposed Rule's definitions of "contractual obligation" and the terms included in the base definition of "illiquid fund." Accordingly, we have set forth below, among other things, specific recommendations relating to those definitions, including an expansion of "contractual obligation" to achieve greater consistency with standard fund practice and investor expectations, qualitative and procedural suggestions for determining whether a fund is "principally invested" and "contractually committed to principally invest," and suggestions regarding additional types of assets and types of restrictions on transfer for inclusion in the definition of "illiquid assets."

1. The definition of "contractual obligation" is too narrow to provide a meaningful exemption for banking entities' investments in illiquid funds, and should be revised to recognize the range of a fund sponsor's obligations and the practical impediments posed by the "reasonable best efforts" requirement

Our principal concern with the Proposed Rule is that the narrow definition of "contractual obligation" could largely nullify the crucial Special Extension for banking entities' investments in and/or provision of additional capital to illiquid funds. For the reasons discussed below, we urge that this proposed definition be modified so that there can be a meaningful extension period for banking entities' investments in illiquid funds.[13]

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[12] Proposed Rule Section 225.180(f)(1)-(3).

[13] The Proposed Rule Release specifically inquires whether there are "other ways to define a 'contractual obligation' that would better achieve the objectives of the Volcker Rule's conformance period." 75 Fed. Reg. at 72746.

Dodd-Frank provides that the Board may extend the conformance period for a banking entity with respect to its investment in or capital contributions to an illiquid fund if the Board finds that such an extension is necessary to fulfill a "contractual obligation" of the banking entity. The Proposed Rule states that a banking entity has a "contractual obligation" if it, under the terms of its equity, partnership or other ownership interest in the fund or other contractual arrangements with the fund, (i) is prohibited from redeeming all such ownership interests in the fund and from selling or otherwise transferring all such ownership interests to a person that is not an affiliate of the banking entity[14] or (ii) is required to provide additional capital to a fund;[15] and, in either such case, (iii) both (A) the contractual obligation may not be terminated by the banking entity or any of its subsidiaries or affiliates under the terms of its agreement with the fund[16] and, (B) when an obligation may be terminated with the consent of other persons, the banking entity and its subsidiaries and affiliates have used their reasonable best efforts to obtain such consent and such consent has been denied.[17]

It is a basic rule of statutory construction that a statute should be interpreted so that it does not substantially contravene Congress's objectives.[18] Accordingly, the term "contractual obligation" should be defined to provide a truly meaningful conformance period for banking entities' investments in illiquid funds. Congress was presumably concerned that a premature liquidation would create unnecessary harm not only to the affected banking entities but more broadly. We believe that the adjustments described below are necessary to meet that Congressional objective.

Under the organizational documents of most private equity funds, an investor generally has no right of redemption and is prohibited from transferring its interest in the fund without the consent of the fund's sponsor in its absolute discretion. However, many fund documents allow an investor to transfer its interest in the fund if retaining such interest would be illegal (in some cases this type of transfer is subject to the reasonable approval of the fund's sponsor).

Accordingly, under the Proposed Rule, many banking entities that have investments in private equity funds apparently will not be able to apply for the Special

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14 Proposed Rule Section 225.181(b)(3)(i)(A), (B).

15 Proposed Rule Section 225.181(b)(3)(ii).

16 Proposed Rule Section 225.181(b)(3)(iii)(A).

17 Proposed Rule Section 225.181(b)(3)(iii)(B).

18 *See, e.g., United States v. Shimer*, 367 U.S. 374, 383 (1961) (holding that when an agency does not reasonably accommodate the policies of a statute or reaches a decision that is not one that Congress would have sanctioned, a court will intervene to enforce the policy decisions made by Congress), *cited in Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 845 (1984), *Natural Res. Def. Council, Inc. v. Herrington*, 768 F.2d 1355, 1383 (D.C. Cir. 1985), *Envtl. Def. Fund v. E.P.A.*, 852 F.2d 1316, 1326 (D.C. Cir. 1988).

Extension because the absolute prohibition on transfer will have been negated by a change in law. This will be the case even though the relevant fund is an illiquid fund and there may be no liquid market in which to transfer the investment.

We do not believe Congress intended to make the Special Extension unavailable to many ordinary investments by banking entities in illiquid private equity funds; rather, it adopted the Special Extension so that banking entities would not be required to engage in forced sales of these interests. The Clearing House believes that this Congressional intent can be effectuated — and serious loss to such banking entities avoided — only if clause (i) above is modified to exclude circumstances where an interest could be transferred or redeemed (if redemption is provided for in such circumstances) solely because of illegality under the Volcker Rule.

We also submit that clause (iii)(A) above should be modified to address the unique difficulties and potential conflicts that could arise in the situation where a banking entity is both the fund's sponsor and an investor in that fund. A fund's sponsor would generally consider and evaluate the package of rights and obligations embodied in the fund's governing documents, other fund contracts, fund offering materials, disclosure documents, and any other duties, in determining whether it should take an action. As an overarching consideration, the fund's sponsor will seek to advance the best interests of a fund and its investors. In many cases, a banking entity that is both a fund's sponsor and an investor in such fund will have the authority either to transfer its interest in the fund or liquidate the fund (including, in some cases, if continuing to own an interest in the fund would be illegal). As discussed above, however, these actions could have significant adverse consequences for the other investors in the fund and, in the case of liquidation, for co-investors with the fund and portfolio companies in which the fund has invested. Attempting to use a banking entity's sponsor authority under a fund's organizational documents to take actions in an effort to comply with Dodd-Frank could pose significant reputational and litigation risk to the banking entity when those actions are contrary to the expectations of the fund investors, the portfolio companies and co-investors, as well as to common practice, and could be viewed as being contrary to statements made in the fund's offering materials or the banking entity's duties to the fund and its investors. At a minimum, these actions by a banking entity could seriously jeopardize, on a long-term basis, a banking entity's relationships with its customers that are investors in the fund and co-investors in the portfolio companies.

We recommend that clause (iii)(A) be modified by adding a proviso that, if the relevant banking entity (or any of its subsidiaries or affiliates) is the fund's sponsor, the clause does not apply if termination of the contractual obligation by the sponsor would be inconsistent with a fund's offering materials, disclosure documents or any other duties of the fund's sponsor.

The Clearing House also recommends that clause (ii) above be clarified to include the wide array of obligations that exist in the fund context. For example, even if a fund investor is permitted to transfer its interest, the assignment of the interest does not generally novate the obligation of the transferor to commit capital if the transferee fails to do so. In addition, investors have contractual obligations to provide capital to cover fund expenses, follow-on investments and payments required pursuant to indemnification provisions and to satisfy clawback fees to other investors in the fund. Accordingly, we request that the Board clarify that it will treat these types of obligations as satisfying the definition of contractual obligation.

Clause (iii)(B) of the proposed definition of "contractual obligation" requires a banking entity to use its reasonable best efforts to obtain the consent of other persons where such persons' consent would allow a contractual obligation to be terminated. We believe that this requirement, which is not included in the statute itself, should be modified or deleted for three reasons.

First, if the consent of an unaffiliated fund sponsor and/or other fund investors is required, they would have little incentive to approve such a transfer, and could be expected to demand material compensation or other concessions. We suggest that "reasonable best efforts" should not include financial or other concessions to an unaffiliated fund sponsor or to other investors. Second, as discussed above, we believe that this requirement potentially places banking entities that act as sponsors in a particularly untenable position. Accordingly, for the same reasons discussed above with respect to clause (iii)(A), we suggest that, should a "reasonable best efforts" requirement remain in the Board's final rule, the requirement should not apply where the relevant banking entity (or any of its subsidiaries or affiliates) is also a fund's sponsor. In the alternative, if the relevant banking entity (or any of its subsidiaries or affiliates) is a fund's sponsor, clause (iii)(B) should be subject to a proviso that the fund's sponsor need not exercise reasonable best efforts to accomplish any action that would be inconsistent with a fund's offering materials, disclosure documents or any other duties of the fund's sponsor. Third, the reasonable best efforts requirement depends on facts and circumstances, and there is no generally agreed framework to evaluate compliance with the standard in this context.

If clause (iii)(B) is retained, The Clearing House believes that the language should be further revised so that it does not require the consent of other persons to have been "denied." A banking entity could use its reasonable best efforts to obtain such consent from the sponsor of or other investors in an unaffiliated fund, but it has no means to compel any affirmative response to such efforts. Accordingly, a very likely response is not a denial but a lack of any response whatsoever. We believe that the Board did not intend to place banking entities at the mercy of third party inaction. Accordingly, if clause (iii)(B) is retained, the clause should refer to whether a consent sought by the banking entity has not been "granted."

Finally, the Proposed Rule provides that, even if a Special Extension of the conformance period is granted for a banking entity with respect to an illiquid fund, that extension will terminate on the date when the banking entity is no longer under a contractual obligation to acquire or retain its ownership interests in, or otherwise provide additional capital to, a fund.[19] For the reasons discussed above, it is essential that this reference to "contractual

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[19] Proposed Rule Section 225.181(b)(2)(ii). We note that a banking entity may have multiple contractual obligations that each individually satisfies the definition of "contractual obligation" and serve as a basis

obligation" be interpreted to effectuate the Congressional intent and avoid undue loss to banking entities. Moreover, the expiration of a contractual obligation may depend on actions of a portfolio company and may not be predictable years or even months in advance. For example, a fund sponsor may decide to release all investors from restrictions on transfer, but banking entities invested in that fund would still need time to arrange sales of their interests, and may only be able to sell those interests at distressed prices. Even if the date when the contractual obligation terminates is known in advance, it may not be permissible or practical for a banking entity to take action to exit its investment until then. The Clearing House recommends that the Board allow banking entities sufficient time (*e.g.*, one year with an ability to take an additional one year if market circumstances require) after termination of a contractual obligation to exit their investment in funds in an orderly manner. We believe that the expiration of any extension period that forces immediate liquidation of a banking entity's investments would conflict with the statutory purpose of the extension period.

2. The "principally invested" test should be a one-time test

The Proposed Rule requires that the determinations of both whether a fund was "principally invested" or "was contractually committed to principally invest" in illiquid assets be made as of May 1, 2010. This determination date is expressly provided for in the statutory language of Dodd-Frank. Accordingly, The Clearing House believes that the Board should make clear that these determinations are one-time tests and do not import additional or continuous measurement or compliance standards into any terms defined under the Proposed Rule. Absent the special circumstances discussed below in Section I.B.3, the alternative of a constant measurement of illiquidity would result in not merely a substantial administrative burden, but continuous uncertainty and unpredictability.

The Clearing House also recommends that, assuming a one-time determination date for evaluating whether a fund's assets are illiquid, it allows funds to use March 31, 2010 financial statements for the "principally invested" tests in the definition of "illiquid fund." Funds and the companies in which they invest typically do not prepare May 1 balance sheets in the ordinary course of business. A banking entity will not necessarily be able to cause the fund to prepare financial statements outside the ordinary course of the fund's operations, and preparing special financial statements, if feasible at all, would impose additional costs and serve no meaningful purpose.

3. The Board should retain flexibility and discretion in applying the definition of "illiquid fund"

The Clearing House believes that the Board should preserve its flexibility to deal with the myriad facts and circumstances that may be presented, including the potential negative impact on the banking entity and other constituencies. Accordingly, the final rule promulgated by the Board should provide explicitly that the rule does not purport to limit or

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for the five-year Special Extension with respect to an illiquid fund. Accordingly, only the expiration of all such contractual obligations of a banking entity should result in the termination of the extension period.

preclude the Board from using its discretionary authority under Section 13(d)(1)(J) of the Volcker Rule, as appropriate given the facts and circumstances, to consider requests for extensions from banking entities beyond those provided for generally in the final rules. For example, the final rule should preserve the discretion of the Board to consider, on a case-by-case basis, requests for extensions in connection with banking entities' investments in funds that became illiquid after May 1, 2010 due to events beyond a banking entity's control, *e.g.*, due to the impact of market disruptions or other factors on the liquidity of a fund's assets, and for which the banking entity can present a sound case to the Board for granting such extension.

4. The definition of "contractually committed to principally invest" should recognize the breadth of a fund's various obligations, should require contractual commitment only during a fund's investment period and should take into account the standard, expected progression of a fund's dispositions of its assets

In order to qualify as an illiquid fund under the second alternative test in the definition of "illiquid fund," Section 225.180(f)(2) of the Proposed Rule requires that a fund had been "contractually committed to principally invest in" illiquid assets.[20] The Clearing House does not believe that contractual commitments should be limited to funds' organizational documents and binding side letters, but also should include all the obligations arising from the other contracts of the fund, fund offering materials and disclosure documents, as discussed in Section I.B.1 above.

Section 225.180(i)(2) requires that a fund be invested in and contractually committed to principally invest in illiquid assets "during the period beginning on the date when capital contributions are first received ... and ending on the fund's expected termination date." A fund's stated mandate will typically be to invest in illiquid assets during the early period of a fund's expected life, but the illiquid assets may become liquid over time as the fund progresses through its life cycle and enters its disposition period. The Clearing House does not believe that the Board should disqualify a fund from meeting the contractual commitment test as of May 1, 2010 as a result of a fund following this effective progression, and therefore The Clearing House believes that, when the existence of a fund's contractual commitment to principally invest in illiquid assets is measured as of May 1, 2010, such contractual commitment should be required to extend only through a fund's investment period and not through a fund's entire life cycle to disposition and termination.

Further, the Proposed Rule Release only refers to a fund in its "initial pre-investment organizational period" as an example of a fund satisfying this test (*i.e.*, one that has contractually committed to principally invest but has not made the requisite level of investments in illiquid assets).[21] The Clearing House believes that the Board should confirm

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[20] Section 225.180(i)(2) defines a fund as contractually committed to principally invest in illiquid assets if the fund's organizational documents, or other documents that constitute a contractual obligation of the fund, provide for the fund to be principally invested in illiquid assets or associated risk-mitigating hedges.

[21] 75 Fed. Reg. at 72745.

that this provision encompasses not only an early stage fund but also a "seasoned" fund in the late stages of its life cycle. Such a fund will have investments in illiquid assets and will be contractually committed to principally invest in illiquid assets but, as of May 1, 2010, may not be principally invested in illiquid assets because a number of assets will have become liquid over time (*e.g.*, an investment in a private company that has subsequently conducted its initial public offering). Funds often exit their investments through public offerings or strategic sales. We believe that a banking entity should not be prevented from receiving an extension because the fund in which it invested and/or for which it is the sponsor chose to exit some of its investments through a public offering as opposed to another form of exit in which an investment would remain illiquid, such as a privately negotiated sale for illiquid assets.

5. The "principally invested" test sets an excessively high threshold

The Proposed Rule uses the term "principally invested" in both the first and second alternative tests and the third, mandatory, test in the definition of "illiquid fund."[22] The Clearing House believes the 75% threshold set forth in the definition is too high. We believe that a fund with at least 25% illiquid assets should be considered to be principally invested in illiquid assets. This guidance is informed by the interpretation of "principally" under Section 20 of the Glass-Steagall Act (12 U.S.C. § 377, now repealed), which is to say "substantially" (meaning at least 25% of revenues).[23] At a maximum, we believe that the Board should interpret "principally" to mean 50.1% of a fund's assets. A 50.1% test is consistent with common usage of "principally" in banking and securities laws.[24] In contrast, the Board's

22 Section 225.180(i)(1) of the Proposed Rule defines a fund as "principally invested" in illiquid assets, as of May 1, 2010, if at least 75% of the fund's consolidated total assets are illiquid assets or "risk-mitigating hedges entered into in connection with and related to individual or aggregated positions in, or holdings of, illiquid assets." We note that the Board, in the Proposed Rule Release, recognizes the logic of including such hedging positions in the percentage calculation because "such positions are, by definition, associated with the fund's illiquid holdings." The Board further reasons that "this approach is consistent with safe and sound risk-management practices and other provisions of the Volcker Rule," citing to the permissibility of certain risk-mitigating hedging activities under Section 13(d)(1)(C) of the Volcker Rule. 75 Fed. Reg. at 72745. We agree with the Board's rationale, and would ask the Board to confirm that each reference to "principally invested" and "principally invest" in the various tests in the definition of illiquid funds would include such hedging positions.

23 *See Securities Industries Ass'n vs. Bd. of Governors of the Fed. Reserve Syst.*, 839 F.2d 47 (2d Cir. 198), cert den. 486 U.S. 1059 (1988). At the time Section 20 was repealed, the Board considered a company not to be principally engaged in underwriting or dealing in bank-ineligible securities if it earned less than 25% of its revenue from such activities. *See* Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities, 61 Fed. Reg. 68,750 (Dec. 30, 1996).

24 Banking agencies and the Supreme Court agree that if a firm engages in an activity at the 50% level, it is indeed "engaged principally" in that activity. *See* OCC Interpretive Letter No. 383; *Board of Governors of the Federal Reserve System v. Agnew*, 329 U.S. at 447. In addition, the SEC appears to have taken the position that the phrase "principally" in the context of the Section 3(c)(2) exemption in the Investment Company Act of 1940 for persons who, among other things, "derive principally" their gross income from underwriting, brokerage, market making, and/or swap dealing businesses activities means approximately 50%. *See, e.g.*, *In re* Paribas Corp., 1940 Act Release No. 6589 (June 23, 1971) (Order) and 1940 Act

proposed 75% definition of "principally" is more equivalent to the definition of the term "predominantly" in banking and securities law contexts, *i.e.*, an 85% threshold.[25] We believe that the Board should give effect to Congress's choice of the term "principally" rather than the term "predominantly," which Congress also used in Dodd-Frank.[26]

6. The definition of "illiquid assets" should be more flexible, allowing for a broader range of circumstances, including contractual restrictions on transfer, which could impact liquidity, and requires clarification of its application to funds of funds

The term "illiquid assets" appears in both the first and second alternative tests and the third, mandatory, test in the proposed definition of "illiquid fund." Section 225.180(g) of the Proposed Rule defines "illiquid assets" as (i) assets that are not liquid or (ii) assets that, because of applicable "statutory or regulatory" restrictions, cannot be transferred. We believe that this definition of "illiquid assets" works well in a number of respects but lacks needed flexibility and fails to take fully into account the fact that the actual liquidity of an asset often depends not only on the inherent nature of the asset but also on the particular circumstances in which the asset is held.[27] Accordingly, we recommend that the definition of illiquid assets include otherwise liquid assets under the following circumstances:

Release No. 6549 (May 31, 1971) (Application); *In re* Investors Diversified Services, Inc., 1940 Act Release No. 5616 (Feb. 20, 1959) (Order) and 1940 Act Release No. 5596 (Jan. 27, 1969) (Application); Federated Capital Mgmt. Assoc., SEC No-Action Letter (August 1, 1975). We note that the Board refers to the appropriateness of reliance on "existing standards" in the Federal banking and securities laws in another section of the Proposed Rule Release. *See* 75 Fed. Reg. at 72744. Likewise, we note that Congress did not use the phrase "substantially all," which is referred to in the Proposed Rule Release. 75 Fed. Reg. at 72745.

25 *See e.g.*, BHC Act § 4(n)(2) ("predominantly engaged" in financial activities, generally, means no less than 85% of annual gross revenues); 17 C.F.R. § 240.3b-18 ("predominantly originated" means that no less than 85% of the value of the obligations in any pool of asset-backed securities were originated by a person or persons).

26 *See* Sections 102(a)(6) and 201(b) of Dodd-Frank. We further believe that, in any case, the Board should apply the "principally invested" test based on the actual cost of each investment, measured at the time the investment was made, and not on the current market value of the fund's entire portfolio. Thus, a fund could be "principally invested" in illiquid assets if it originally invested the required percentage of its invested capital in illiquid assets and the remainder of its invested capital in liquid assets, even if the illiquid assets have subsequently fallen in value relative to the liquid assets and currently account for less than the required percentage of the fund's assets at current market prices. A market-value based test is difficult to implement, and a fund's allocation of investments in illiquid and liquid assets varies over time depending on market conditions and the relative performance of a fund's portfolio.

27 In *Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring*, issued December 16, 2010, the Basel Committee on Banking Supervision (the "Committee") similarly recognizes that the aspects of an asset position beyond inherent characteristics of the asset itself may determine the extent of the asset's liquidity for purposes of the liquidity coverage ratio test (the "LCR Test"). For example, only unencumbered assets that can be converted easily and immediately into cash at little or no loss of value can be considered "high-quality liquid assets" for purposes of the LCR Test. The Committee

- Substantive illiquidity — for example, an asset that cannot be converted to cash without total or substantial loss of value because the market is not sufficiently deep or liquid;

- Illiquid positions in liquid assets — for example, a fund may hold a substantial investment in a liquid asset, such as a listed equity (*e.g.*, 15-20%), but positions of this size are normally not easily transferable; and

- Any other asset that the Board determines, in its discretion, should be considered an illiquid asset based on all the facts and circumstances.

The second element of the definition of "illiquid assets" extends the definition to include otherwise liquid assets that nonetheless are subject to statutory or regulatory restrictions on transfer applicable to the asset or the fund. The Clearing House believes that this element should be further expanded to include the existence of *contractual* restrictions on transfer as a determining factor in whether an asset is illiquid. Funds' investments in portfolio companies are often accompanied by meaningful contractual restrictions in, for example, purchase agreements, shareholders agreements or lock-up agreements. Such contractual provisions can restrict the transfer of assets for several years. These are customary provisions negotiated on an arm's-length basis that allow funds, and the companies in which they invest, to plan for orderly exit of investments in a manner that protects the stability of the portfolio company and the value of the investment. Such restrictions can frequently affect a large portion of a fund's assets. Contractual restrictions in this context also should include pledges and other encumbrances on assets which would require the fund to obtain the consent of a third party in order to transfer the encumbered asset.

The second element of the definition of "illiquid assets" discussed above is subject to the proviso that assets considered to be illiquid due to transfer restrictions on the asset or the fund will cease to be considered illiquid once the transfer restrictions are no longer applicable. As discussed above, the determinations, for purposes of the "illiquid fund" definition, of both whether a fund is "principally invested in illiquid assets" or was "contractually committed to principally invest in illiquid assets" are made as of May 1, 2010. Because the determination of whether a fund is an "illiquid fund" is a one-time test, we believe that this proviso should be deleted as inconsistent with the basic determination approach.

We also believe that the Board should confirm, consistent with the text of the Proposed Rule, that funds' interests in unaffiliated funds are illiquid assets if those interests meet the definition of an illiquid asset. The Board states in its release concerning the Proposed Rule that "investments in other hedge funds or private equity funds that <u>both</u> are not publicly traded <u>and</u> invest in illiquid assets" (emphasis added) will be considered illiquid assets. Funds'

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also states that the liquidity of an asset for the purposes of the LCR Test depends on the volume of the asset to be converted into cash, the timeframe over which the conversion could be affected and the breadth and depth of an asset's market when determining an asset's liquidity. We suggest that the Board consider carefully any variation from this Basel standard.

interests in other funds should be subject to the same test applicable to other assets held as investments by a fund (under which the test is "either-or"). If an investment in another fund is an illiquid asset, that should be the end of the inquiry. Indeed, a banking entity would not have the ability to make this determination with respect to an underlying unaffiliated fund or require a third-party sponsor to provide information necessary to do so. A fund of funds, for example, typically does not have contractual or other rights to obtain information about the assets of the funds in which it invests to the degree required in order to assess the liquid or illiquid nature of the underlying fund's assets. The fund of funds also faces potential impediments to a transfer of its interests in the underlying fund analogous to the impediments facing banking entities with respect to transfers of the fund interests discussed above in Sections I.A and I.B.1. Accordingly, we do not believe that the asset mix of an underlying unaffiliated fund should be required to satisfy the definition of an illiquid fund if the fund's interest in the underlying fund is itself illiquid.[28]

7. Part of the definition of "liquid asset" is overbroad and may capture genuinely illiquid assets

As mentioned above, the first element of the definition of illiquid asset defines the term as an asset that is not a liquid asset. The Proposed Rule defines a "liquid asset" as an asset that satisfies any one of six asset categories in the section.[29] We recommend that the Board revise the fourth category at Section 225.180(h)(4) of the Proposed Rule because it appears overbroad and, as a result, may overlap and contradict other categories. Over-the-counter securities that are quoted routinely on the OTC Bulletin Board or Pink Sheets may satisfy the fourth category of the definition as being quoted routinely in a widely disseminated publication, but these electronic quotation systems may not create bona fide, competitive bid and offer quotations, as required under the third category of the definition. The proposed definition leaves open the possibility that a small number of trades could be reported as "indicative" and repeated through various financial networks or electronic service aggregators, which may overstate the actual size and viability of the market. Further, the prices quoted in such publications may reflect special situations of the buyer and seller and therefore may not

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28 We note that neither the statutory language nor the Proposed Rule addresses the situation where a banking entity is contractually obligated under the terms of its investment in an unaffiliated fund to retain its interest and the unaffiliated fund does not meet the definition of "illiquid fund."

29 Section 225.180(h) defines "liquid asset" as: (1) Cash or cash equivalents; (2) An asset that is traded on a recognized, established exchange, trading facility or other market on which there exist independent, bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular asset almost instantaneously; (3) An asset for which there are bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system or similar system or for which multiple dealers furnish bona fide, competitive bid and offer quotations to other brokers and dealers on request; (4) An asset the price of which is quoted routinely in a widely disseminated publication that is readily available to the general public or through an electronic service that provides indicative data from real-time financial networks; (5) An asset with an initial term of one year or less and the payments on which at maturity may be settled, closed-out, or paid in cash or one or more other liquid assets described in paragraphs (h)(1), (2), (3), or (4); and (6) Any other asset that the Board determines, based on all the facts and circumstances, is a liquid asset.

be available in material volume, to other market participants or in aggregate at the volume of the relevant asset held by a fund. There also is a risk that the reported prices reflect price models, as opposed to actual competitive bid and offer quotations as would be available in a recognized exchange or inter-dealer quotation system. We recommend that the fourth category in the definition of "liquid asset" be deleted or, in the alternative, that the fourth category of liquid assets in the Proposed Rule be subject to a proviso that such assets will not be deemed to be liquid merely because of the availability of price quotations without further evidence that such prices reflect the presence of a deep and liquid market.

II. Recommendations Regarding the Implementation of Extensions of the Conformance Periods

The Proposed Rule includes standards, timing and procedures to be followed in connection with any request by a banking entity for an extension. We believe that a number of modifications are necessary both to provide clarity and certainty and to carry out Congressional intent.

A. The Proposed Rule should be clarified to allow the Board to grant extensions for investments, activities and commitments commenced in good faith after the effective date of Dodd-Frank

The Clearing House recommends that a banking entity be permitted to request an extension of the conformance period even if it acquired ownership interests, became a sponsor or otherwise committed to provide capital to a fund after the effective date of Dodd-Frank if it entered into such investment, sponsorship or commitment in the good faith belief that the transaction was not barred by the Volcker Rule but the Board's final regulations prohibited the transaction. The incorporation of a good faith standard would be consistent with the Board's approach in other analogous contexts, such as the authority to acquire equity in satisfaction of debts previously contracted ("DPC").[30]

Nothing in the statutory text prohibits banking entities from relying on the general conformance period and extensions for activities and investments begun after the enactment of Dodd-Frank. Dodd-Frank became law on July 21, 2010, but final rules implementing the Volcker Rule may not be adopted until late 2011, and, as the Board well knows, there are numerous interpretive questions under the Volcker Rule. In the meantime, banking entities are in a difficult position as they try to determine how the restrictions of the Volcker Rule will ultimately affect many of their investments. During this period, banking entities may enter into investments, activities or commitments that they believe in good faith are permissible, or should be clarified as being permissible, under the Volcker Rule, but that the Board later determines in its rule-making process are not permissible. Examples of this include a determination that a particular type of entity is a "similar fund," or a determination not to carve out from the definition of "banking entity" or "hedge fund" and "private equity fund"

30 *See* 12 C.F.R. § 225.22(d)(1)(i).

interests in companies acquired on a DPC basis, traditional employee retirement funds sponsored by a banking entity or other investments that are widely expected to remain permissible.[31]

B. The Board should clarify a number of procedural aspects of the Proposed Rule

Section 225.181(c)(1) of the Proposed Rule requires a banking entity to submit a request for an extension of the conformance period at least 90 days before the expiration of the applicable time period, but does not include a "start date" for requests or indicate how quickly the Board expects to act on such requests. Banking entities will require considerable planning and lead time to wind down activities and investments, and it will not be practical for banking entities to come into conformance in a short time if the Board denies their requests for extensions. The Clearing House recommends that the Board adopt a standard for when requests may be filed (*e.g.*, up to 1 year in advance) and an indicative time period for Board action (*e.g.*, within 60 days of the request). We recommend that if the Board is unable to act on a request within the indicative time period, the banking entity automatically be granted a corresponding period beyond the initial two-year conformance period and its already-approved extensions to conform its activities and investments to the Volcker Rule. We believe that the inclusion of such a provision is supported by the demands that could be placed on the Board's resources by the likely number of requests that banking entities will need to make for General Extensions and Special Extensions. If the Board, due to the volume of extension requests received, is prevented from responding to all requests in a timely manner, such delays could seriously impact a banking entity's ability to plan and conform its activities and investments in the absence of corresponding extensions to its existing conformance deadline.[32]

The Clearing House recognizes that the General Extension conformance period provides for separate one-year extensions, but we recommend the following procedures in order to promote the orderly management of investment positions. If a banking entity so requests in its original application, the Board could grant all three extensions at once. The Board could do this by conditionally granting the additional two years (or one year) of

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31 The Clearing House submitted a letter on November 5, 2010 to the Financial Stability Oversight Council, in response to its Advance Notice of Proposed Rule-Making, which, among numerous other issues, explains why we believe that interests acquired on a DPC basis and traditional employee retirement funds should not be covered by the Volcker Rule.

32 We respectfully submit that the Board's estimates of individual and aggregate burdens associated with requests for General and Special Extensions do not appear to reflect the magnitude of the effort that banking entities will need to undertake to meet the framework for extension requests. *See* Section IV.A of the Proposed Rule Release (75 Fed Reg. at 72747). The extension requests must cover the numerous issues outlined in the Proposed Rule Release. 75 Fed. Reg. at 72743. Moreover, The Clearing House believes that extension requests will frequently require substantial fact-gathering and analysis to ensure that the Board receives the information necessary for the facts-and-circumstances-based inquiry it will undertake. Further, given the fact-specific nature of banking entities' investments in funds and the various extensions available, banking entities will often need to file multiple applications for each of their investments and/or extension requests for multiple investments in funds, and each fund may have several banking entity investors, each with its own unique set of circumstances for the Board's consideration.

extensions if the banking entity files a supplemental application before the expiration of the appropriate period (*e.g.*, within 90 days) setting forth the banking entity's explanation why the continuation of the extension is appropriate to avoid financial or other loss.

With respect to illiquid funds, the Proposed Rule appears to confirm that the Special Extension is up to five years beyond any one-year General Extensions. It is not clear, however, exactly when and how a banking entity must apply for a General Extension and a Special Extension when it expects to need both extended conformance periods. We believe that banking entities should be able to apply for all three one-year General Extensions and the five-year Special Extension for a total of eight years at once (*i.e.,* at least 90 days before the expiration of the initial two-year conformance period). Many illiquid funds have remaining lives of many years, and an eight-year extension would help avoid ongoing uncertainty about their future. This proposed change would resolve, up front and at once, any uncertainty over the length and availability of extensions of the conformance period. Similar to above, the Board could conditionally grant the total eight-year extension, subject to the banking entity's filing a supplemental application before the expiration of each appropriate period (*e.g.*, within 90 days) setting forth the banking entity's explanation why the continuation of the extension is appropriate to avoid financial or other loss. The Clearing House further believes that, to avoid ongoing uncertainty to funds with lives of many years, the Proposed Rule should more clearly state that banking entities will be able to apply for the five-year Special Extension for banking entities' investments in illiquid funds before the end of the initial two-year conformance period even if they do not apply for the one-year General Extensions. [33]

C. The Board should clarify that General Extensions apply to activities as well as investments

The Clearing House further believes that the Board should clarify that, when a General Extension is granted, the extension period granted covers not only a banking entity's investments but also all non-conforming activities, including proprietary trading and "covered transactions" (as defined in Section 23A of the Federal Reserve Act) by or with funds that are managed, advised or sponsored by the banking entity. We note that, in contrast to Section 13(c)(3)(A) of the Volcker Rule, which refers only to making or retaining investments or providing additional capital to illiquid funds, Section 13(c)(2) refers more broadly to the conformance period for "<u>activities</u> and investments" (emphasis added) without limiting the applicability of the General Extension to any particular class of activities. The clear implication of a banking entity being required to bring its "activities and investments" into compliance with the Volcker Rule no earlier than the later of (i) two years after the effective date of the Volcker Rule and (ii) any approved General Extension is also to extend the time for a banking entity to comply with the covered transaction and proprietary trading prohibitions.

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33 We believe that the Board should confirm that once a Special Extension is approved, it will not be revoked if the banking entity does not seek, or the Board does not approve, additional one-year General Extensions.

D. The Board should clarify that employees of banking entities will not be required to divest or terminate investments and commitments made prior to effectiveness of the Volcker Rule

The Clearing House believes that the Board should clarify that commitments made by a banking entity's employees prior to the effective date of the Volcker Rule to provide capital to hedge funds and private equity funds sponsored by the banking entity, and the ability of such employees to retain interests in such funds, are not subject to the Volcker Rule, and therefore need not be divested or otherwise terminated. In the alternative, however, we suggest that such commitments and investments should be subject to the same transition periods, including any General Extensions and any Special Extensions (insofar as they relate to a fund in which an employee is invested), that are available to the banking entity itself. We believe that such a clarification is necessary to avoid unnecessarily harming employees of banking entities by forcing them to transfer their interests in sponsored funds in the absence of a deep and liquid market and at the further distressed prices that could result from the combination of factors discussed above in Section I.A.

E. The Board should expand its list of factors that will be considered in its determinations of whether to grant extension requests

Section 225.181(d) of the Proposed Rule lists a number of factors that a banking entity must address, and the Board may consider, when determining whether to grant a banking entity's request for an extension of the conformance periods. Even though the Proposed Rule makes clear that the Board may consider all the facts and circumstances related to a fund when making its determination, we believe that the list of factors should be expanded to incorporate explicitly the issues posed by the interests of other constituencies, as discussed above in Section I.A, including the impact on other fund investors, co-investors in the portfolio companies and lenders to the fund's portfolio companies, that have an interest in a fund if the Board were to deny an extension request. As a practical matter, there are numerous reasons outside the control of the banking entities, and in addition to market conditions generally, why a sponsor may have to modify its strategy and timing for exiting an investment, such as events that occur at a portfolio company. We believe that asking all banking entities to address this in applications will be a helpful factor to the Board in evaluating individual extension requests.

* * *

III. Conclusion

Thank you for considering the views expressed in this letter. The Clearing House appreciates the opportunity to share our views and would be pleased to discuss any of them further at your convenience. If you have any questions, please contact me at (212) 612-9234 (e-mail: joe.alexander@TheClearingHouse.org).

Sincerely,

Senior Vice President,
Deputy General Counsel, and
Secretary

cc: Hon. Timothy F. Geithner
Chairman, *Financial Stability Oversight Council* and
Secretary, *Department of the Treasury*

Hon. Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System

Hon. Sheila Bair
Chairperson
Federal Deposit Insurance Corporation

Hon. Gary Gensler
Chairman
Commodity Futures Trading Commission

Hon. Mary Schapiro
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Mr. John Walsh
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Mr. Edward DeMarco
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