WEDBUSH

January 30, 2012

Ben S. Bernanke, Chairman
Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

Mary L. Schapiro, Chairman
Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

John G. Walsh, Acting Comptroller
Deborah Katz, Assistant Director
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Martin J. Gruenberg, Acting Chairman
Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
Board of Governors
550 17th Street, NW
Washington, DC 20429

Gary Gensler, Chairman
David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds
(Federal Reserve Board Docket No. R-1432, RIN 7100 AD 82; SEC File Number S7-41-11; FDIC RIN 3064-AD85; OCC Docket ID OCC-2011-14); CFTC RIN 3038-AD05

Dear Sirs and Madams:

WEDBUSH, Inc. ("Wedbush") is a leading financial services and investment firm that, through its subsidiaries, provides private and institutional brokerage, investment banking, private capital, research, commercial banking, and asset management to its individual, institutional and issuing clients. With a history dating back to 1955, Wedbush operates one of the largest full-service investment banking and brokerage firms headquartered in the western United States, and takes pride in its stable and profitable track record rooted in prudent and responsible risk management.

Wedbush appreciates the opportunity to provide the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Commodity Futures Trading Commission (collectively, the "Agencies") with comments on the proposed rules promulgated by the Agencies (collectively, the "Proposed Rule") implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

Wedbush is strongly supportive of Congress and the Agencies' efforts to bolster the stability of the financial system and discourage imprudent risk taking. In particular, we agree with the public sentiment against the use of insured customer deposits – and potentially taxpayer funds – to fund and/or backstop risky and complex financial transactions that have a substantial likelihood of destabilizing the depository institution, and we believe that reducing the risks to insured deposits, taxpayers and the financial system is an important and valuable objective. Implementing rules to accomplish these goals is, of course, a challenging and complicated endeavor, and we support the Agencies' open approach and efforts in this respect. We are also appreciative of the recent extension of the comment period with respect to the Proposed Rule, acknowledging the volume and complexity of the issues involved in, and questions raised by, this rulemaking process.

We have been working closely with industry and trade groups, including the Securities Industry and Financial Markets Association ("SIFMA") and the American Bankers Association ("ABA"), and are in agreement with the feedback that SIFMA and ABA have provided to the Agencies to date. Either separately or together with others, we will likely submit an additional letter or letters addressing in greater detail several other issues raised in the Proposed Rule. We devote this letter, however, to raising a single issue in the Proposed Rule that is of particular significance to our business and, we believe, fundamental to the practical application of the Proposed Rule: the definition and application of the term "banking entity."

As set forth in greater detail below, we suggest that the activities of non-bank affiliates of depository institutions be exempted from the requirements otherwise applicable to "banking entities" under the Proposed Rule where appropriate separation and controls preventing diversion of regulatory capital from the depository institution to such affiliated entities are in place. Such an action by the Agencies would greatly alleviate misdirected burdens placed upon non-bank businesses, strengthen depository institutions and the banking system, and serve the purposes intended by Congress in charging the Agencies with rulemaking under the Act.

<u>The Overbroad Definition Applied to "Banking Entity" in the Proposed Rule Is Excessively Burdensome and Deprives Depository Institutions of Sources of Strength</u>

Following the statutory definition in the amended Bank Holding Company Act, the Proposed Rule applies the term "banking entity" to "any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing."[1] This defined term is then applied throughout the Proposed Rule, and each of the prohibitions, restrictions, and compliance and reporting obligations is applied to all entities falling within this broadly defined term.

A perhaps unintended consequence of applying such a broad definition in this fashion is that the Proposed Rule would sweep up numerous entities whose activities have no adverse impact on any depository institution, in no way put in jeopardy depositors' accounts and would not in any event be backstopped by depository insurance provided by taxpayers. Indeed, many of these entities are engaged in entirely separate businesses with activities that are wholly unrelated to any depository institutions other than by virtue of their common ownership. In other cases, the existence of such other businesses may in fact substantially enhance the financial and operational strength and stability of a depository institution and its holding company by virtue of, among other things, diversification, greater liquidity and access to capital.

The Act codifies the "Source of Strength Doctrine" requiring bank holding companies ("BHCs") and savings and loan holding companies ("SLHCs") to act as a "source of financial strength" to their depository institution subsidiaries, "provid[ing] financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution." Inherent in this formulation is the assumption that BHCs and SLHCs have assets and businesses apart from the depository institution from which to draw support in times of distress. Applying the term "banking entity" broadly, as the Proposed Rule does in its current form, would place substantial and burdensome analytical, reporting and compliance obligations on BHCs and SLHCs, both directly and through the increased burdens placed on their respective non-bank subsidiaries, and unnecessarily restrict the activities in which all of such entities could engage, with no offsetting benefit to the stability, profitability or soundness of the affiliated depository institution or to the banking system as a whole. Indeed, it would deprive the depository institution and its holding company of critical sources of strength from which they would rely in difficult times, subjecting these entities as well as the entire banking system to greater risk.

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[1] Proposed Rule at p.8.

Additionally, the broad application of the term "banking entity" is likely to weaken depository institutions and their holding companies in a variety of other ways. For instance, capital may be driven away from these entities, as investors are concerned about being deemed to be directly or indirectly "controlling" a depository institution, subjecting such investors' other portfolio companies to the compliance, reporting and operational requirements of the Proposed Rule. Also, with other jurisdictions imposing less draconian restrictions, U.S. depository institutions and their holding companies will be at a competitive disadvantage vis-à-vis their foreign counterparts. Finally, by diverting already stretched regulatory resources and attention toward numerous unrelated businesses and therefore away from actual depository institutions, necessary and important regulatory supervision and oversight systems will necessarily be diluted and the banking system weakened.

Depository Institutions May Be Adequately Insulated From The Activities of Their Affiliates Without Mandating Total Separation

We recognize that the fact that two affiliated entities engage in separate activities at one point in time does not alone guarantee that funds cannot be diverted from one such entity to another at a later date. However, safeguards and restrictions could be put into place to adequately insulate the activities of the two businesses from one another. There is significant precedent for this approach, including in the broker-dealer realm here in the United States, as well as in proposed banking reforms likely to be instituted abroad.

A broker-dealer registered with the Securities and Exchange Commission must maintain certain net capital requirements and is restricted from making withdrawals, distributions, or otherwise reducing or impairing its regulatory capital without first obtaining approval and/or providing notice to its relevant regulator. Such restrictions have been put into place to ensure the capital integrity and financial stability of registered broker-dealers. Rather than restricting the activities of affiliates, which would involve significant unnecessary costs and give rise to unanticipated consequences, this approach gets to the heart of the issue by preventing unexpected outflows to parent or affiliated companies, stakeholders or others.

Similarly, the United Kingdom, through a Final Report issued by the Independent Commission on Banking published in September 2011 (the "Vickers Report"), has proposed a "ring fencing" approach whereby retail banking and wholesale/investment banking activities would be structurally separated to avert contagion and taxpayer liability. The Vickers Report explicitly considered and then rejected mandating total separation where retail banks and investment banks would be banned from being in the same corporate group, reasoning that sufficient protection could be obtained at significantly less cost to the economy.[2] One such cost of total separation highlighted by the report is that it would "preclude support for troubled retail banks from elsewhere in banking groups."[3] Instead, under the proposed plan, retail banking and investment banking activities would need to be engaged in by legally and operationally separate entities, with capital requirements applicable to the entities engaging in retail banking.

The Agencies Are Empowered To Address This Issue

Pursuant to the Act, Congress entrusted the Agencies with the authority to exempt from the prohibitions against proprietary trading and ownership or investment in private equity funds "such activities [that] would promote and protect the safety and soundness of the banking entity and the financial stability of the United States."[4] We urge the Agencies to consider such an exemption for the activities of non-bank affiliates of depository institutions where appropriate separation and controls preventing diversion of regulatory capital to such affiliated entities are in place.

As set forth above, we believe firmly that the activities of depository institutions' affiliated entities can be an important source of strength to the financial stability and well-being of depository institutions. So long as appropriate safeguards are instituted to prevent the use of insured deposits or bank capital from being used outside the scope of the depository institution's customary and permitted activities, allowing non-bank affiliates to continue their normal business activities would indeed promote the safety and soundness of the banking entity and the nation's financial stability. Through a rule setting forth such an exemption and the criteria for such safeguards, the Agencies could dramatically improve the Proposed Rule both to better accomplish its stated aims and to do so at a substantially lower cost to the economy.

Wedbush welcomes the opportunity to further discuss the Proposed Rule and our comments as reflected herein. If you have any questions, please do not hesitate to contact the undersigned at (213) 688-8081.

Respectfully submitted,

Eric Wedbush
President

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[2] "The Commission's analysis of the costs and benefits of alternative structural reform options has concluded that the best policy approach is to require retail ring-fencing of UK banks, not total separation. . . The Commission believes that ring-fencing would achieve the principal stability benefits of full separation but at lower cost to the economy." Independent Commission on Banking, "Final Report Recommendations," September 2011 at p. 11.

[3] Id. At p.26.

[4] The Act at (d)(1)(J).