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The Real Estate Roundtable

January 27, 2012

Office of the Comptroller of the
Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219

Ms. Jennifer J. Johnson, Secretary
Board of Governors
The Federal Reserve System
20th Street & Constitution Ave. NW
Washington, DC 20551

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

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

Re: Docket No R-1432 and RIN 7100 AD 82; RIN 3064-AD85;
File Number S7-41-11 -- Restrictions on Proprietary Trading and Certain
Interests in and Relationships with Hedge Funds and Private Equity Funds

Dear Ladies and Gentlemen:

The Real Estate Roundtable is pleased to submit this letter in response to the joint-agency (Agencies) request for comments regarding the proposed rules to implement Section 619 of the Dodd-Frank Act¹. Section 619 added a new section 13 to the Bank Holding Company Act of 1956 ("BHC Act") (to be codified at 12 U.S.C. 1851) that generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund ("covered fund"), subject to certain exemptions.² New section 13 of the BHC Act also provides for nonbank financial companies supervised by the Board that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits, or other restrictions.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

² The term "banking entity" is defined in section 13(h)(1) of the BHC Act, as amended by section 619 of the Dodd-Frank Act. See 12 U.S.C. 1851(h)(1). The statutory definition includes 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. Section 13 of the BHC Act defines the terms "hedge fund" and "private equity fund" as an issuer that would be an investment company, as defined under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or any such similar funds as the appropriate Federal banking agencies (i.e., the Board, OCC, and FDIC), the SEC, and the CFTC may, by rule, determine should be treated as a hedge fund or private equity fund. See 12 U.S.C. 1851(h)(2).

The Real Estate Roundtable represents the principal owners, investors and managers of the U.S. income-producing commercial and multifamily real estate sector. As such, we recognize that the goal of the Agencies is to provide greater integrity and discipline in domestic and international capital markets. The Real Estate Roundtable and its members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the nation's leading income-producing real property owners, managers and investors, the elected heads of America's leading real estate trade organizations, as well as the key executives of the major financial services companies involved in financing, securitizing or investing in income-producing properties.

Since the onset of the financial crisis, The Real Estate Roundtable has been urging policymakers to adopt policies that will help enhance liquidity, encourage capital formation, create jobs and restore health to the commercial and multifamily real estate sector. A number of policy initiatives have been enacted that have had a positive impact on stabilizing the unprecedented dislocation of credit markets. However, the Roundtable has significant concerns that the provisions of the Dodd-Frank Act known as the "Volcker Rule"³ have been drafted so broadly that they could have the unintended consequence of materially, negatively impacting liquidity and capital formation in commercial real estate just when this sector is struggling to rebound.

Hopes for a broader recovery in real estate credit markets continue to be undermined by uncertainty in global credit markets and the broader economy – and are further exacerbated by a lack of confidence in the credit-rating process and the regulatory climate. The commercial real estate sector continues to struggle with diminished liquidity and faces an equity gap of well over \$1 trillion. The two largest sources of credit to the sector commercial banks and commercial mortgage-backed securities (CMBS) – remain lackluster, as delinquencies rise and property fundamentals continue to decline, due to the economic downturn and damage to the small business sector.

This sector – which is a very important catalyst to the broader economy, and a significant employment base – needs policies that will facilitate equity investment in commercial real estate. The Volcker Rule, if applied to commercial real estate, does just the opposite. It would limit the amount of private equity capital available, without advancing the stated purpose of the Act to reduce systemic risk. Commercial real estate equity funds account for only a small portion of the real estate market. The fund documents themselves limit the amount of leverage in their subsidiaries at the property level, and typically include restrictions that prevent the use of complex financial instruments. Accordingly, commercial real estate equity funds do not present systemic risk and are not engaged in activities that the Volcker Rule seeks to curtail. These are merely vehicles structured and organized to facilitate what is, in every important respect, a traditional real estate investment. A multi-tier structure is solely offered to accommodate peculiar needs of investors (e.g., capital from foreign investors, coming into the U.S.), the ultimate assets of which are traditional real estate investments. And traditional real estate investments should not be subject to the Volcker Rule.

³ Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

We respectfully urge you to help protect the nascent recovery in the commercial real estate markets: Grandfather transactions completed before enactment so as not to force the sale of assets leading to further potential value deterioration; exempt or exclude majority-owned private equity structures from the definition of “private equity funds,” so that companies can use internal structuring to reduce risk to control companies; and permit companies that do not guarantee the liabilities of funds to advise and invest in commercial real estate structures even when there is an FDIC-insured affiliate in their family of companies. Funds that are used to facilitate what is in every way a traditional real estate investment should be excluded from the Volcker Rule, which was never intended to deal with traditional real estate investing.

Conclusion

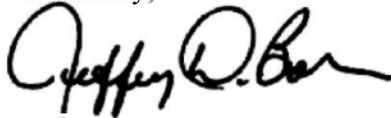
Accordingly, we respectfully request that the Agencies consider a re-proposal of the rule following the public comment period, rather than issue a final rule. We also recommend that a comprehensive/cost benefit analysis be conducted of how the proposed will affect commercial real estate and the overall national economy before the rules are finalized. By adding this additional step, the Agencies could further refine the Proposed Rules and reduce the potential for an unintended negative impact on the securitization market, important capital formation, and the national economy.

Again, we appreciate this opportunity to comment, and we look forward to working constructively with the Agencies on this important matter.

We trust that the Agencies will find our few comments useful. If you have questions or require additional information, please contact Clifton E. Rodgers, Jr., by telephone at (202) 639-8400 or by email at crodgers@rer.org.

Thank you for this opportunity to comment on this important issue. We welcome the opportunity to discuss this with you in more detail at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with a prominent initial "J".

Jeffrey D. DeBoer
President and Chief Executive Officer