



Bundesanstalt für
Finanzdienstleistungsaufsicht

Via E-Mail

Mr John G. Walsh
Acting Comptroller of the Currency
**OFFICE OF THE COMPTROLLER
OF THE CURRENCY**
12 CFR Part 44
Docket ID OCC-2011-14
RIN 1557-AD44

regs.comments@occ.treas.gov

Mr Daniel K. Tarullo
**BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM**
12 CFR Part 248
Docket No. R-1432
RIN 7100 AD 82

regs.comments@federalreserve.gov

Mr Martin J. Gruenberg
Chairman (Acting)
**FEDERAL DEPOSIT INSURANCE
CORPORATION**
12 CFR Part 351
RIN 3064-AD85

comments@fdic.gov

Ms Mary L. Schapiro
Chairman
SECURITIES AND EXCHANGE COMMISSION
17 CFR Part 255
Number S7-41-11
RIN 3235-AL07

rule-comments@sec.gov

10 February 2012

Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds ("Volcker Rule")

Contact:

Deutsche Bundesbank
Wilhelm-Epstein-Str. 14 | 60431 Frankfurt am Main
Postfach 10 06 02 | 60006 Frankfurt am Main
zentrale.bkk@bundesbank.de
www.bundesbank.de

Bundesanstalt für Finanzdienstleistungsaufsicht
Graurheindorfer Str. 108 | 53117 Bonn
Postfach 13 08 | 53003 Bonn
poststelle@bafin.de
www.bafin.de

Dear Sirs / Madam

With this letter Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Deutsche Bundesbank, the two German Financial Supervisory authorities, would like to take the opportunity to comment on your proposal regarding the practical implementation of the Volcker Rule. We would like to point out that we appreciate your efforts to strengthen the stability of financial institutions and therewith the resilience of the financial system as a whole. In combination with the G20 reform agenda and other national initiatives, U.S. financial reform will contribute to reducing the risk of a future financial crisis. However, we would like to address two issues that may have far reaching consequences not only for German banks: the extraterritorial reach of the Volcker Rule and the planned exception for proprietary trading in US governmental obligations only.

Firstly, the Volcker Rule prohibits foreign banking entities which are active on the U.S. market to engage in proprietary trading and to invest in hedge or private equity funds. The most important exemption from this rule for foreign banking entities is the "solely outside the U.S." (SOTUS) exemption according to which concerned banks may engage in proprietary trading and hedge or private equity funds as long as this engagement occurs solely outside the United States. With the SOTUS-exemption in its current form, the Volcker rule imposes US regulation on non-US-activities of international banks. Moreover, it deems slightest reference to the U.S. as a potential risk and therefore forfeits the given exemption. While we appreciate the general opportunity the exemption grants, we would like to propose a less restrictive interpretation than outlined in your Notice of Proposed Rule Making as it interferes with the principle of territoriality. Instead of focusing on the location of the trading activity and the participants involved, the proposal should take into account the location of risk-taking – which in our understanding ought to be the rationale behind the Volcker Rule. We also regard it as very important that the U.S.-authorities limit the scope of the Volcker Rule to foreign banks' U.S. operations and to approve adequate home standards for foreign banks.

For supervised foreign banks, these very restrictive criteria for applying the SOTUS exemption will presumably lead to high compliance costs. For Home-Supervisors in their respective jurisdictions, it means an additional burden to regulate and supervise internationally active banking groups. We also believe that close cooperation between the host and home supervisory agencies is needed in order to minimize the compliance costs for both regulators and banks. In this regard, we would like to direct your attention to the relevant Memoranda of Understandings regarding international cooperation in banking supervision. In this context, we would also appreciate a more thorough explanation of the proposed reporting and recordkeeping requirements and their application to foreign banks. In its current form, the regulations for the reporting of the international banks are ambiguous and may induce uncertainty among market participants.

Secondly, we would like to address the treatment of government obligations. According to DFA, US agencies have discretionary authority to draft exemptions for other government securities. In the Notice of Proposed Rulemaking, Question 122 asks whether "*US agencies should adopt an additional exemption for proprietary trading in the obligations of foreign governments and/or international development banks.*" We would highly appreciate an extension of the proposed exemption. To the best of our knowledge, we believe that there is no economic rationale against extending the exemption to other government bonds with a similar risk structure as U.S. government bonds. A rule that draws on economic criteria for designating exempted bonds would help to minimize distortions on international capital markets and enhance efficiency.

If the exemptions only persisted for US obligations, this would hamper banks' ability to trade with e.g. European bonds. Because many US-located banks (US and foreign) play an important role in market-making for Government bonds, this will certainly affect liquidity. Furthermore, government securities play a crucial role in the liquidity management for global banks. Allowing the exemption for U.S. government securities only, the rule would interfere with banks' management of liquidity and funding requirements. Please let us reiterate how much we appreciate and welcome your efforts to strengthen the financial stability of the U.S. and the world as a whole. However, in its current form the Volcker Rule extends U.S. regulation to foreign jurisdictions and may create distortion in Governmental bond markets. We therefore ask you to carefully reconsider the design of the Volcker rule in this regard.

Yours sincerely,



Vice President
Deutsche Bundesbank



President
BaFin