Mr. John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Mr. Daniel K. Tarullo
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Mr. Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Ms. Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20551

Paris, 14 FEV 2012

Re: Proposed Rulemaking Implementing the Volcker Rule

Dear Madam, Dear sirs,

As Chairmen of the *Autorité de contrôle prudentiel* ("ACP") and the *Autorité des marchés financiers* ("AMF"), and as Head of the French Treasury, we take the opportunity of the public consultation on your proposed rulemaking to raise specific concerns on the proposed rules related to implementation of the Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[1]. Although this is not a formal contribution to your consultations we would like to draw your attention specifically to the case of foreign-headquartered financial organizations and in particular French entities.

[1] Codified as new Section 13 of the Bank Holding Company Act of 1956 (the "BHCA").

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The "Volcker Rule" prohibits banking entities, including international banks, from (a) engaging in proprietary trading or (b) sponsoring, or acquiring or retaining an ownership interest in a "private equity fund" or a "hedge fund" ("covered funds"). These requirements are applicable to insured depository institutions; companies that control an insured depository institution; and foreign banks with a branch, agency, or subsidiary bank in the United States, as well as to an affiliate of one of these entities[2]. However specific exemptions may be granted for certain activities, certain products and for trading activities outside of the US by foreign banking entities

We are concerned by the recent proposal for implementing measures of the Volcker Rule, submitted in November to public comment by the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Securities and Exchange Commission (SEC), which has been also adopted as part of its proposed rule by the Commodity Futures Trading Commission (CFTC). We feel that the implementing measures may have non-desirable, unhelpful and significant extraterritorial consequences for the non-resident banking entities (*i.e.* functional and/or structural reorganization, such as reporting/recordkeeping requirements applicable to the whole groups, especially concerning quantitative metrics) and that such negative effects could induce unexpected impact for both U.S and E.U economies.

Moreover, considering the current global regulatory effort led by the G20 to improve financial regulation in a coordinated basis, we believe that such an approach could lead to regulatory overlaps and inconsistencies.

First, based on our experience, especially in a cross-border prudential supervision, we support a mutual recognition regime for foreign banking organizations built around close cooperation frameworks and an adequate and balanced symmetrical system taking into account the home and the host country regulatory frameworks, respectful of the responsibilities which are assumed by the primary regulator. Therefore, considering the potentially serious negative impact of the extraterritorial reach of the proposed rule, we would support <u>the application of the Volcker rule to foreign banking groups only for their legal entities based in the US or having an activity in the US</u> (either through a branch or an agency). On the contrary, Foreign holding companies and their subsidiaries which have no activities within the US should be exempted from this rule for the reason that their activity is "*solely outside the US*". We already apply the highest and most stringent regulatory standards in terms of market risk supervision (Basel 2.5) and will implement as well the agreed standards on the treatment of globally systemic banks (higher loss absorbency requirement and key attributes on resolution).

Second, the exclusion from the scope of the Volcker Rule of a series of activities related to investment funds (e.g. retail funds, covered funds that are not actively marketed in the US, European depositaries) should be clarified to avoid harmful consequences. We provide in the annex our main areas of concerns arising from the proposed scope of the rule, which should be better circumscribed.

Finally, according to the proposed implementation of the Volcker rule, not only US banking groups but also foreign banking groups (those that have a branch or a subsidiary in the US) would be subject to restrictions on their current positions of public sector bonds, except US treasuries and other public agencies securities. We are very much concerned that such a wide implementation of the Volcker rule might

[2] BHCA § 13(a)(1).

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have strong negative implications on sovereign bond markets worldwide, resulting in lower liquidity and higher spreads. We therefore suggest to extend the range of exempted securities to include European bonds issued by public entities.

Taking into consideration the short timeframe of the proposed rulemakings, we would be happy to explore with you various options in a constructive approach, as initiated in the context of other bilateral fora (e.g. the EU-US dialogue on financial services or the EU-US technical working group on derivatives regulation) and we would be pleased to further discuss on this very important subject.

Our regulatory objectives are the same and we look forward to our continued co-operation in this field.

Yours Sincerely,

Ramon Fernandez
Director
Direction Générale du Trésor

Christian Noyer
Chairman
Autorité de contrôle prudentiel (ACP)

Jean-Pierre Jouyet
Chairman
Autorité des marchés financiers (AMF)

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Annex : main areas of concerns with the proposed implementation of the Volcker rule regarding funds

i) Uncertainties concerning the exclusion from the scope of the Volcker Rule of the non-U.S. trading activities based on the "*solely outside the U.S.*" clause. In particular, activities should be considered "*solely outside the U.S.*" even if a hypothetical U.S. nexus related to such activities is identified, *e.g.* transactions booked outside U.S. territory but related to U.S. securities or involving U.S. counterparties or employee;

ii) Uncertainties concerning the definition of the exclusion from the scope of the Volcker Rule of covered funds not "*offered for sale or sold to a resident of the United States*". In this situation, funds in which U.S. residents have invested on their own initiative, without having been solicited by the investment manager or its distributing agents, should not be regarded as "*sold*" to the U.S. residents;

iii) Uncertainties concerning the possibility for a European banking entity to carry out depositary functions and other services for a covered fund. In the EU, the Alternative Investment Fund Managers (AIFM) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directives require the appointment of a single depositary for each fund (mutual or private) that is managed. The depositary ensures the safe-keeping of the assets (custody or record-keeping depending on the type of assets) and is mostly chosen among banking entities. These rules seek to prevent conflicts of interest and systemic risks. It would be extremely disruptive that U.S. rules constrain the implementation of European legislation by restricting the provision of depositary functions and services;

iv) The inclusion of the foreign equivalent of any entity identified as a covered fund ("*similar funds*") in the scope of covered funds. The proposed definition appears to be excessively large and would likely cover most of European funds, including funds marketed to retail investors in the European Union. The comprehensive framework in place in the E.U, based on UCITS and AIFM directives, should, in cooperation with relevant EU authorities, be resorted to in order to better define the scope of entities identified as "*similar funds*";

v) Provisions which would prohibit any covered fund from sharing the same or similar name with the banking entity or any of its affiliates, and from using the word "*bank*" in its name. Whereas we understand the prohibition from using the word "*bank*" or the name of a bank, there is no need to prevent a fund from using a name derived from the name of its management company, affiliate of a banking entity covered by the Volcker rule, if this name does not refer to that of a bank;

vi) Uncertainties concerning the inclusion of normal custody and settlement services for covered funds under "covered transactions" for the purposes of article "Super 23 A" as provisional credit or liquidity for securities settlement or banking custody-related transactions are by nature not a source of risk for sponsored and advised funds.

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