February 13, 2012

By electronic submission, www.regulations.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds: Docket No. OCC-2011-0014, RIN 1557-AD44; Docket No. R-1432, RIN 7100 AD 82; RIN 3064-AD85; Release No. 34-65545, File No. S7-41-11, RIN 3235-AL07

Ladies and Gentlemen:

Tokio Marine & Nichido Financial Life Insurance Co., Ltd. ("TMNFL") appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking ("Proposal") jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Securities and Exchange Commission (collectively, "Agencies")[1] regarding implementation of the new section 13 of the Bank Holding Company Act (the so-called "Volcker Rule"), as set forth in section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA").[2] TMNFL is a life insurance company concentrated on variable life insurance including variable annuities in Japan as a member of Tokio Marine Group which operates internationally in 39 countries worldwide.

In connection with providing insurance products, TMNFL invests its customers' insurance premiums in a variety of funds worldwide. While these funds are not hedge or private equity funds as those terms are commonly known, the Proposal's broad definition of covered funds, as it applies to non-U.S. funds, would include such funds. As we discuss below, we respectfully submit that the Proposal's definition of covered funds outside the United States is over-broad, goes beyond the plain meaning of the DFA and will result in unintended extraterritorial consequences. We raise these issues, not as a "banking entity," but as a customer of such banking entities.

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1 76 Fed. Reg. 68,846 (Nov. 7, 2011).

2 Public Law 111-203, 124 Stat. 1376 (July 21, 2010).

Definition of "Covered Fund"

The Agencies have proposed to combine the terms hedge fund and private equity fund into a single term "covered funds." The Proposal's definition of covered fund includes issuers if they would be an investment company, as defined in the Investment Company Act, *but for* the exemptions contained in section 3(c)(1) or 3(c)(7) of that Act. Moreover, if an issuer may rely on another exclusion or exemption from the definition of "investment company," other than those contained in section 3(c)(1) or 3(c)(7) of that Act, it would not be considered a covered fund, as long as it can satisfy all of the conditions of such alternative exclusion or exemption.[3] The Proposal explains that the intention is to exempt from the definition of covered fund those entities and corporate structures that might otherwise come under the statutory definition of hedge fund or private equity fund but are not generally used to engage in investment or trading activities.

With respect to foreign funds, the Agencies have exercised their rulemaking authority under the DFA by including within the definition of covered funds the foreign equivalent of any entity defined as a covered fund

> [These funds] have been included in the proposed rule as 'similar funds' given that they are generally managed and structured similar to a covered fund, except that they are not general subject to the Federal securities laws due to the instruments in which they invest or the fact that they are not organized in the United States or one or more States.[4]

While this statement in the preamble of the Proposal gives some hope that there will be some analysis of whether a foreign fund is actually similar enough as to be the equivalent of a U.S. covered fund, the actual proposed rule text fails to take into account the diversity of regulatory regimes and fund structures found worldwide. We respectfully disagree with the Agencies' assertion that *all* foreign funds that would qualify for an exemption under sections 3(c)(1) or 3(c)(7) of the Investment Company Act may be characterized as generally managed and structured similar to the Proposal's definition of a U.S. covered fund and urge the Agencies to adopt a more nuanced approach, as discussed in the study by the Financial Stability Oversight Counsel:[5] "In implementing the Volcker Rule, the Agencies should consider criteria for providing exceptions with respect to certain funds that are technically within the scope of the 'hedge fund' and 'private equity fund' definition in the Volcker Rule but that Congress may not have intended to capture in enacting the statute."[6] The current definition of covered fund as it applies to foreign funds is broad and over-inclusive and would encompass many more fund types in addition to what is typically thought of as a private equity fund or hedge fund. In doing so, the Proposal would restrict activities that do not have the same inherent risks that Congress intended to address by limiting activities with respect to hedge funds and private equity funds.

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3 *See* 76 Fed. Reg. at 68,897.

4 *See* 76 Fed. Reg. at 68,897.

5 Financial Stability Oversight Counsel, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds and Private Equity Funds (January 18, 2011) (the "FSOC Study").

6 *Id.* at 7.

TMNFL's Fund Investments

The Proposal fails to differentiate between foreign funds that are the economic equivalent to hedge funds and private equity funds, and may have the same attendant risks, and those foreign funds that may be differentiated based on their structure and the regulatory regime that they are subject to. TMNFL invests in such funds organized in Japan, and many other countries, such as France. Many of these funds that best meet our needs and our customers' needs are advised by U.S. banking entities. We fear the Proposal will limit the choices we will have as investors on behalf of our customers.

TMNFL invests the premiums of its variable annuity insurance holders in certain funds organized outside the United States that would be included in the definition of covered funds under the Proposal. These funds are structured so that the sole investor in each fund is the insurance company itself, TMNFL. However, under Japanese law such funds are treated in a manner similar to that of U.S. publically-offered funds because, in many cases, TMNFL functions as a pass-through investment conduit for the underlying policyholders. Nevertheless, if a U.S. headquartered banking entity is acting as sponsor or an investment adviser to such fund, our understanding is that the banking entity may have to stop offering us such services or may be prohibited from engaging in certain transactions with the fund or with us as a substantial investor in such fund due to the so-called Super 23A provisions.

Consistent with the view that the funds invested in by insurance companies are for the benefit of policyholders, Japan's Insurance Business Act imposes disclosure and other requirements on insurance companies, including a requirement that insurance companies prepare filings that are the equivalent to the 'prospectus' and annual report filings required of Japanese investment funds. These requirements are stipulated by Article 100-2 of the Insurance Business Act, and Article 53 paragraphs (5), (6) and (7) of the Enforcement Regulations of the Insurance Business Act. Pursuant to these requirements, TMNFL must prepare a publically available 'prospectus' that contains fund information that is equivalent to the information contained within a 'prospectus' for a publically offered Japanese investment fund.

Accordingly, these requirements are similar to those imposed on U.S. publically-offered funds that would not meet the definition of a covered fund under the Proposal. Given the purpose of TMNFL's investment in the funds – as a pass-through investment conduit for its insurance policy holders - and the regulatory regime in which TMNFL operates, such funds should not fall within the definition of a covered fund. Fund structures in other countries may bear more resemblance to registered investment companies in the United States, but are structured with an eye toward their own home country's regulatory regime, and thus may technically fall within the Proposal's broad definition of foreign equivalent covered funds.

Therefore, we respectfully request that the Agencies revise the definition of covered fund so as not to be so broad with regard to funds organized outside the United States. We urge the Agencies to use their discretion to effectively review such funds rather than export the blanket definition outside the United States. Section 619 of the DFA gives the Agencies discretion regarding similar funds and does not require the formulaic definition the Proposal included with regard to funds organized outside the United States. In the alternative, we respectfully request that the Agencies issue a separate rulemaking to independently address the complex issues involved in defining what a foreign based equivalent to a private equity fund or hedge fund is.

We thank you for your attention. If you have any questions, please contact to as follows:

Kenji Sugawa
Marketing Department
e-mail; kenji.sugawa@tmn-financial.co.jp

Tomoyuki Kawakami
Investmwnt Department
e-mail; tomoyuki.kawakami@tmn-flnancial.co.jp.

Sincerely,

Tokio Marine & Nichido Financial Life Insurance Co.,Ltd

Kinichi Fukushima
Director