SOCIETE GENERALE
Corporate & Investment Banking

February 13, 2012

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Office of Domestic Finance
1500 Pennsylvania Avenue NW.
Washington, D.C. 20520

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
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Washington, D.C. 20549-1090

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
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Office of the Comptroller of the Currency
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Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
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Washington, D.C. 20429

David A. Stawick,
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
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Washington, D.C. 20581

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

Ladies and Gentlemen:

Société Générale ("SG")[1] appreciates the opportunity to comment on the proposed rules (the "Proposed Rules") implementing new Section 13 of the Bank Holding Company Act of 1956 (the "Volcker Rule") included in the notice of proposed rulemaking published 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, the "First Agencies") in the Federal Register on November 7, 2011[2] and in the notice of proposed rulemaking (not yet published in the Federal Register) issued by the Commodity Futures Trading Commission (together with the First Agencies, the "Agencies").[3]

[1] SG is a French bank with branches located in New York and Chicago, an agency located in Dallas and a representative office located in Houston. SG also owns SG Americas Securities, LLC, a U.S. broker-dealer headquartered in New York.

[2] *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 76 Fed. Reg. 68846 (proposed Nov. 7, 2011).

[3] *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Covered Funds*, available at: http://www.cftc.gov.

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The Volcker Rule generally prohibits banking entities, including certain foreign banks with operations in the United States, such as SG, from (a) engaging in proprietary trading and (b) acquiring or retaining an ownership interest in, or sponsoring, a "private equity fund" or a "hedge fund" ("covered funds"), in each case subject to certain exceptions.[4]

Although the Volcker Rule permits certain otherwise prohibited activities to be conducted "solely outside of the United States" (the "Offshore Exception"),[5] the Proposed Rules impose significant restrictions on this exception, which we believe go well beyond what is required by the statutory language of the Volcker Rule. It is our view that the Proposed Rules, if implemented, will adversely impact both the U.S. and foreign economies and inappropriately extend U.S. regulations to the non-U.S. activities of foreign banks. Moreover, the Proposed Rules would have significant and unintended consequences for the U.S. markets and financial stability. Foreign investment in U.S. businesses would be limited and liquidity in U.S. markets would be reduced. This would have the effect of reducing U.S. jobs. These negative consequences would result, yet there will likely not be any apparent benefit to the financial stability of the U.S. or the safety and soundness of U.S. banks.

Overview

Congress intended the Volcker Rule to promote the safety and soundness of United States banks, enhance United States financial stability, and reduce the risks to United States taxpayers, without inappropriately imposing United States law on foreign jurisdictions. The Proposed Rules go well beyond implementing these intentions and are also inconsistent with the language of the Volcker Rule itself. As described in more detail below, we urge the Agencies to:

(1) implement the Offshore Exception as it applies to proprietary trading by focusing on the location of the risk held, not where specific activities take place;

(2) allow U.S.-based entities and personnel of a banking entity to conduct offshore sales activities related to offshore covered funds;

(3) reconsider the compliance program set forth in the Proposed Rules as it applies to non-U.S. entities, especially in light of the longstanding principles of international comity and deference to home country regulations; and

(4) delay the date by which banking entities will be required to implement the mandated compliance regime given the many questions regarding the application of the proposed compliance program to U.S. and non-U.S. institutions.

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4 Bank Holding Company Act of 1956 (the "BHCA") § 13(a)(1).

5 See BHCA § 13(d)(1)(H) and § 13(d)(1)(I). Although the Offshore Exception actually consists of two exceptions, one related to proprietary trading and one related to hedge funds and private equity funds, we refer to these exceptions in the singular for ease of discussion.

The Offshore Exception

The Proposed Rules are Overbroad

Congress explicitly limited the extraterritorial effects of the Volcker Rule by permitting foreign banks to engage in proprietary trading and to sponsor and invest in covered funds "solely outside of the United States." This reflects Congress's legitimate desire to protect U.S. banks, the U.S. economy and U.S. taxpayers. The limitation is also consistent with U.S. banking laws, rulemaking and administrative interpretation, which limit the extraterritorial application of U.S. banking law and allow appropriate deference to home country supervisors.

The Proposed Rules, however, impose broad requirements that would dramatically curtail the exception's availability. Banking entities wishing to rely on the Offshore Exception for proprietary trading would be required to ensure, among other things, that (a) no party to the relevant purchase or sale is a resident of the U.S., (b) no personnel of the banking entity who is directly involved in the purchase or sale is physically located in the U.S. and (c) the purchase or sale is executed wholly outside of the U.S.[6] The Proposed Rules would significantly limit foreign banks from accessing the U.S. markets for legitimate client needs and prohibit many activities that support the U.S. economy and are consistent with applicable foreign law, all without addressing the types of risks that the Volcker Rule sought to control. For example:

- Foreign banks would be unable to execute many transactions for their own account in a large number of U.S. assets, such as securities listed on U.S. exchanges, even if the risk of such transaction was held entirely outside of the U.S. by the foreign bank. We believe this would impair the capital-raising efforts of many U.S. companies in an already difficult economic environment and will be very detrimental to the U.S. markets and economy.

- Foreign banks would be unable to execute many transactions for their own account through even unaffiliated U.S. broker/dealers, even where the risk of those transactions is held entirely outside of the U.S. As foreign banks currently use U.S. broker/dealers extensively in their dealings with the U.S. market, we believe that the implementation of the Proposed Rules would result in a sizable decrease in the business of U.S. broker/dealers, potentially reducing the number of U.S. jobs, without any corresponding reduction in risk to the U.S. taxpayer.

- Foreign banks would be unable to engage in many types of transactions with U.S. persons, including U.S. persons who are not subject to the Volcker Rule. These U.S. persons (including certain corporations, hedge funds, mutual funds and other investors) would have fewer parties with whom they can transact, resulting in a reduction of liquidity in many markets.

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[6] See Proposed Rule §__.6(d)(3).

The Proposed Rules will prohibit activities that pose little or no risk to the U.S. taxpayer, and are otherwise legal in most foreign jurisdictions. The Proposed Rules would also reduce market liquidity in the U.S. without decreasing risk to U.S. banks or U.S. taxpayers.

The Proposed Rules are also inconsistent with the plain language of the statute. The statutory definition of proprietary trading is "engaging as a principal for the trading account" of a banking entity.[7] By using the word "principal," the Volcker Rule's proprietary trading prohibition focuses on the *location of the principal risk*, not the location of the banking entity's agents, counterparties, traders or execution facilities. The Offshore Exception allows proprietary trading if the trading occurs solely outside of the U.S. The word "trading" should be interpreted in light of the Volcker Rule's prohibition; in other words, as the prohibition focuses on the location of principal risk, so should the exception. The statute does not focus on the location of trading activities, which is not relevant to the statute's policy objectives of decreasing systemic risk in the U.S. The Offshore Exception should allow proprietary trading as long as the location of the principal risk is outside of the U.S. The Proposed Rules exceed the scope of the statute by adding additional restrictions on mere activities that extend beyond trading as principal. The use of a U.S. agent or execution facility by a foreign bank entering in a principal trade for its own account, or the execution of such a transaction by such foreign bank by or with a U.S. person, does not change the *location* of the foreign bank's risk. The Proposed Rules are therefore inconsistent with the Volcker Rule in this regard.

Alternative Approach to Offshore Exception

SG proposes that the Agencies implement the Offshore Exception by focusing on the location of the risk held, not on where specific activities take place. Under such an approach, proprietary trading activity conducted by a foreign bank would generally be considered to occur solely outside of the United States if two key requirements are satisfied: (1) the proprietary trading positions as principal (including the risk of loss of such positions) are held and maintained outside the U.S.; and (2) any entity or personnel in the U.S. that act as broker, agent, trader, adviser or intermediary for the foreign bank conduct any such activities pursuant to the foreign bank's authorization and review, in accordance with risk parameters established, reviewed and maintained by the foreign bank (acting through one or more of its senior officers) outside of the U.S. Under such an approach, a foreign bank may use a U.S.-based broker, agent, adviser or intermediary (who may or may not have discretionary authority to act for the foreign bank), so long as any risk related to the relevant position resides outside of the U.S. Consequently, SG suggests removing the Offshore Exception's prohibitions regarding transacting with U.S. residents, the use of U.S.-located agents and personnel, and the execution of transactions in the U.S.

Hedge Funds and Private Equity Funds

We also believe that the Proposed Rules add restrictions to the Offshore Exception as it applies to fund ownership and sponsorship that are not required by the statute. To comply with the Offshore Exception, the Proposed Rules would require that no subsidiary, affiliate, or

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[7] See BHCA § 13(h)(4) (emphasis added).

employee of the banking entity involved in the offer or sale of an ownership interest in the covered fund be incorporated or physically located in the U.S.[8] We believe that this would cause many fund sales jobs to move overseas without any benefit to U.S. financial stability or the safety and soundness of U.S. banks. It would also negatively impact the clients of an international bank as it is often the case that U.S. affiliates of non-U.S. banking entities participate in the offer and sale of non-U.S. funds to non-U.S. persons. Under the proposed rule, a U.S.-based salesperson could not sell a foreign fund to a Brazilian client merely because the salesperson, acting as an intermediary only, is located in the U.S. This will disadvantage clients in Latin America and the Caribbean who are used to dealing with salespersons based in the U.S. We therefore urge the Agencies to delete from the final rule this proposed restriction on sales activities of U.S.-based personnel and broaden the scope of the Offshore Exception for covered fund activities to conform to industry norms and market practices as reflected in Regulation S under the Securities Act of 1933 ("Regulation S").[9]

Compliance Program

The Proposed Compliance Requirements are Unduly Onerous, Especially Abroad

The Proposed Rules would impose detailed compliance and reporting requirements on foreign banks. The Proposed Rules appear to impose these requirements on the non-U.S. subsidiaries, affiliates and branches of foreign banks. Given the extremely limited Offshore Exception, it is likely that many foreign entities will therefore become subject to a new, complex U.S. regulatory regime. Additionally, while the Proposed Rules are not entirely clear, the rules appear to impose the compliance requirements on certain non-U.S. operations of foreign banks. For example, it appears that if any portion of a trading unit's activities, regardless of the size, relied on the market-making, hedging, underwriting or U.S. government security exemptions, the compliance regime could apply to all the activities of that trading unit, even those activities with no U.S. nexus. Imposing the proposed compliance regime on foreign banks' foreign activities (including those activities not subject to the Volcker Rule) would be an extreme extraterritorial expansion of U.S. law. Foreign banks are subject to their own prudential regulation, and the proposed compliance programs may be inconsistent with applicable home country regulations, potentially causing foreign banks to be unable to comply with their local regulations -- including prudent asset management requirements under Basel rules. Overall, such a broad application of the Volcker Rule would be inconsistent with longstanding principles of international comity and deference to home country regulators.

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8 See Proposed Rule §__.13(c)(3)(ii). The Proposed Rule does not appear to limit the location of advisory or portfolio management activity. SG supports this approach as consistent with the statute.

9 For many years, Regulation S has been the primary source of guidance as to whether securities transactions have sufficient contacts and effects in the United States to trigger the application of the U.S. securities laws. Regulation S looks at the totality of an issuer's offering, including not only whether U.S. investors acquire securities directly from the issuer, but also whether the issuer directly or indirectly is actively seeking to market its securities to U.S. investors, to determine whether the offering occurs outside the United States.

Ambiguity

The proposed compliance and reporting requirements would require banking entities to calculate and report a number of quantitative metrics for each "trading unit" engaged in certain activity subject to the Volcker Rule.[10] While the Proposed Rules provide some degree of guidance as to how each of the quantitative metrics is to be calculated, many questions need to be resolved before banking entities can create the necessary systems to measure the metrics.[11] In addition, as described in the previous paragraph, there are ambiguities regarding the application of the proposed compliance program to foreign banks, and we are concerned with the lack of guidance in this regard. We urge the Agencies to consider such ambiguities, in light of industry comments, and to propose a clear set of rules that clarify such ambiguities.

Timing

We also urge the Agencies to delay the date by which banking entities will be required to implement the compliance and reporting regimes, which is currently scheduled for July 21, 2012. The delayed date should allow time for (a) the Agencies to consider comments and questions on the Proposed Rules and to publish a revised set of proposed rules and (b) banking entities to put in place the complex systems that will be required to implement the necessary systems. Building such systems will be an unprecedented and highly-complex undertaking, requiring coordination among business lines, support functions and affiliated entities around the world. It will also require banking entities to review their businesses and to make certain decisions as to how metrics will be calculated (for example, determining what constitutes a "trading unit"). Given the complexities of the Proposed Rules, the Agencies should use the delay to conduct a rigorous cost/benefit analysis of the Proposed Rules, both as a whole and rule-by-rule, in order to measure the potential economic impact of the Proposed Rules both on individual banking entities and, more generally, on the U.S. economy overall.[12]

Conclusion

Adopting our proposal regarding the Offshore Exception would substantially mitigate the complex implementation issues related to Volcker Rule compliance by non-U.S. institutions and reduce the Agencies' burden in enforcing the rule on a global basis. In any event, but especially if our proposal is not adopted, we urge the Agencies to consider the impact of the Proposed Rules on the non-U.S. activities of foreign banks and to adapt the rules to avoid creating

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10 See Proposed Rule §__.7(a) and Appendix A, Section III.

11 For example, to calculate "Inventory Aging," banking entities are generally required to calculate the amount of time they hold individual assets and liabilities. However, the Proposed Rules provide no guidance as to how such value would be calculated where a specific asset or liability remained on an entity's books for a period of time, but the position (number of shares or notional amount) increased or decreased in size during that period. It is unclear whether the calculation period would begin at the initial acquisition of the asset/liability, at each time the position increased/decreased, or be based on some sort of weighted average. In addition, where such assets or liabilities are subject to repurchase arrangements, additional clarity is also required.

12 This approach is further described in the letter on the Proposed Rules submitted by the Securities Industry and Financial Markets Association on February 13, 2012.

unwarranted and unprecedented new requirements for the head offices and non-U.S. operations of foreign banks. The Agencies could, for example, require only U.S.-domiciled entities engaging in covered activities in the U.S. to be subject to the compliance requirements. Any compliance regime applicable to non-U.S. institutions should not focus on activities that would be conducted outside the U.S. under relevant exemptions.

We appreciate your consideration of our comments on the Proposed Rules. If we can answer any questions or provide any further information, please contact Laura Schisgall at (212) 278-5656 or Jason Hoberman at (212) 278-6261.

Respectfully,

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