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February 13, 2012

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

The Honorable John G. Walsh
Acting Comptroller of the currency
Department of the Treasury
250 E St, SW
Mail Stop 2-3
Washington, DC 20219

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

The Honorable Mary L. Schapiro
Chairman
Securities & Exchange Commission
100 F St., NE
Washington, DC 20549-1090

Re: Notice of Proposed Rulemaking on Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (FRS Docket No. R-1432 & RIN 7100 AD 83; OCC Docket ID OCC-2011-14; FDIC RIN 3064-AD 85; SEC File Number S7-41-11).

Dear Sirs and Madam:

The undersigned companies are writing as a group of financial services companies with substantial insurance operations, each of which also controls a savings association and is a savings and loan holding company. Generally, our thrift operations are a smaller component of our overall activities and serve to support and supplement our primary businesses. The thrifts provide valuable services to our policyholders, agents and customers, by offering convenience and reducing costs.

We appreciate the opportunity to comment on the above-referenced request for comment. This letter sets forth our analysis of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended Section 13 to the Bank Holding Company Act of 1956 (commonly referred to as the "Volcker Rule"). We believe that the above-

referenced proposed regulation would implement the Volcker Rule in a manner inconsistent with both statutory language and Congressional intent by failing to recognize that an insurance company is permitted to invest through the general account or through separate accounts in private equity and hedge funds (defined in the proposed regulations as “covered funds”).

As a general matter, Congress was cognizant of the unique nature of insurance and appropriately recognized that the Volcker Rule, if improperly implemented, could have severe and unintended results on insurance companies that have insured depository institutions in their holding company structures. Therefore, Congress mandated that the banking agencies tasked with implementation ensure that any regulations:

“appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system.”¹

Congressional intent is evidenced by the specific reference to insurance company *investment* laws, which clarifies the intent that the accommodation required under the Volcker Rule relates both to the proprietary trading restrictions and the private equity and hedge fund *investment* restrictions. Congress accommodated the insurance industry because insurance companies are subject to comprehensive, conservative state investment laws that are specifically designed to promote the safety and soundness of the regulated insurance company through such measures as investment limits and diversification requirements. This accommodation is also related to the differences in the insurance company model from virtually all other financial institution models in its predominant focus on long-term liabilities and on supporting these long-term liabilities with long-term assets and investments. Because of the unique nature of insurance company operations, recognition and preservation of state investment law authority is essential to the safe and sound conduct of the insurance business. This applies as much to state investment law authority to invest in private equity or hedge funds through the general account or through separate accounts as it does to the state investment law authority to engage in putative proprietary trading.

Furthermore, an essential part of the business of insurance is that an insurer invests its general account assets in a broad range of investments, including private equity and hedge funds, as permitted under applicable insurance law. Recognition of these fundamental points is essential to any exercise in accommodating the business of insurance in the context of the Volcker Rule. The Volcker Rule recognizes the important regulation provided by state insurance investment laws. Most state laws allow for insurance company investments into covered funds subject to certain strict requirements, such as a limitation as a percentage of admitted assets. State regulators recognize the importance of such investments for diversification and asset management allocation strategies, while at the same time placing prudent, conservative limitations on the extent to which an insurance company can avail itself of this class of investments.

To address the needs of the insurance industry, Congress drafted the plain language of the Volcker rule to provide for an exemption from the covered funds prohibition for insurance company general account activity.

Subsection 13(a) of the BHC Act sets forth the general prohibition as follows:

¹ Subsection 13(b)(1)(F) of the Bank Holding Company Act of 1956.

(a) IN GENERAL.— (1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not – (A) engage in proprietary trading; or (B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

Subsection 13(d)(1) of the BHC Act then sets forth the exemptions from the prohibitions:

Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as ‘permitted activities’) are permitted:

* * * * *

(F) The purchase, sale, acquisition, or disposition of securities and other instruments *described in subsection (h)(4)* by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company... *(emphasis added)*.

Subsection 13(h)(4) of the BHC Act sets forth the definition of “proprietary trading”:

The term ‘proprietary trading’... means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, *any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may ... determine (emphasis added)*.

The permitted activity in subsection 13(d)(1)(F) is an exemption “[n]otwithstanding the *restrictions* under subsection (a).” This statutory language shows Congress’ intent that the permitted activity applies to both the proprietary trading prohibition and the covered fund prohibition set forth in subsection 13(a).² However, the permitted activity in subparagraph

² The list of permitted activities would generally apply to both prohibitions against proprietary trading and investment in or sponsorship of covered funds; however, when Congress intended otherwise, it so stated. Thus Section 13(d)(1)(H) applies only to the proprietary trading restrictions and specifically exempts “[p]roprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States...” [emphasis added.] Therefore, this permissible activity by its express scope would not encompass covered funds.

13(d)(1)(F) permits the purchase and sale on behalf of insurance company general accounts in “securities and other instruments *described in* subsection (h)(4).”

It’s important to note that Subsection 13(h)(4) is only the definition of “proprietary trading”; it is not the restriction itself. While 13(h)(4) defines the term “proprietary trading”, it is referenced only for the purpose of conveniently providing direction to the permissible investments of a regulated insurance company. The reference to this portion of the definition of “proprietary trading” in no way limits the scope of permissible activity only to proprietary trading. The reference to “securities and other instruments described in (h)(4)” in the permitted activity of subsection 13(d)(1)(F) is, therefore, not stating that the permitted activity only applies to the proprietary trading, but rather states that a regulated insurance company may purchase and sell the securities and other instruments *described in* 13(h)(4) for its general account. The securities and other instruments described in subsection (h)(4) are “any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract.” Since an investment or ownership interest in a private equity and hedge fund is legally by definition a “security,” then, consequently, private equity funds and hedge funds clearly may be acquired by an insurance company for its general account under the permitted activity set forth in 13(d)(1)(F).

Contrary to the language of the statute and Congressional intent, the proposed regulations do not recognize the permitted activity that insurance companies may invest in covered funds. As a result, this would prohibit an insurer such as those in the thrift coalition from investing in covered funds, such as hedge funds and private equity funds.

Without recognition of the permitted activity of an insurance company’s general account investment in covered funds, the proposed regulations would prohibit insurance companies from making diversified portfolio investments that will have a collateral impact on the economy as a whole since these investments generally support business growth and development. Investments into covered funds are even more critical given the low interest rate environment, as most insurance companies have large fixed income portfolios. Covered funds provide enhanced portfolio diversification, the opportunity for potentially higher returns, and the ability to invest soundly in specialized strategies that may not otherwise be available to insurers.

To appropriately accommodate the business of insurance, it is also necessary that the rules recognize explicitly that insurance companies are permitted to invest in covered funds through separate accounts on behalf of customers. The language of Section 13(d)(1)(D), which permits investment activities on behalf of customers, parallels the language of section 13(d)(1)(F), in that it draws no distinction between proprietary trading and covered fund investment activities, and instead permits the purchase, sale, acquisition or disposition of securities and other instruments “described” in section 13(h)(4) of the Volcker Rule. Under the plain language of section 13(d)(1)(D), separate account investments in covered funds are thus permitted, and the rules should reflect this fact.

We respectfully request that the final regulations specifically recognize the permitted activity of an insurance company to purchase, sell, acquire and dispose of covered funds with

Likewise, Section 13(d)(1)(G) and (I) would apply only to covered funds and lists as permitted activities “[o]rganizing and offering a *private equity or hedge fund*” and “[t]he acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a *hedge fund or a private equity fund* by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States.” [emphasis added.] Therefore, the scope of these permissible activities would not include proprietary trading.

its general account assets and through separate accounts. Thank you for the opportunity to comment.

Sincerely,

Country Financial

Mutual of Omaha

Nationwide Mutual Insurance Company

Principal Financial Group

The Prudential Insurance Company of America

State Farm Mutual Automobile Insurance Company

TIAA-CREF

Westfield Group