

# RAYMOND JAMES

January 10, 2012

**Office of the Comptroller of the Currency (“OCC”)**

<http://www.regulations.gov>

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RIN: 1557-AD44

[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

250 E Street, S.W., Mail Stop 2-3

Washington, DC 20219

**Board of Governors of the Federal Reserve System (“Board”)**

Ms. Jennifer J. Johnson, Secretary

<http://www.regulations.gov>

Docket No. R-1432

RIN 7100 AD 82

[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Board of Governors of the Federal Reserve System

20<sup>th</sup> Street and Constitution Avenue, NW

Washington, DC 20551

**Federal Deposit Insurance Corporation (“FDIC”)**

Mr. Robert E. Feldman, Executive Secretary

Attention: Comments

<http://www.fdic.gov/regulations/laws/federal/propose.html>

RIN 3064-AD85

[comments@fdic.gov](mailto:comments@fdic.gov)

Federal Deposit Insurance Corporation

550 17<sup>th</sup> Street, NW

Washington, DC 20429

**Securities and Exchange Commission (“SEC”)**

Ms. Elizabeth M. Murphy, Secretary

<http://www.regulations.gov>

File Number S7-41-11

Release No. 34-65545

RIN: 3235-AL07

[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

**RE: Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds**

Ladies and Gentlemen:

Raymond James Tax Credit Funds, Inc, a Florida corporation and a wholly owned subsidiary of Raymond James Financial, Inc., a Florida corporation (NYSE: RJF) respectfully submits the following comments requested by the OCC, the Board, FDIC, and SEC on a proposed rule that would implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and certain interests in, or relationships with, a hedge fund or private equity fund.

**Raymond James Tax Credit Funds, Inc.**

A Subsidiary of Raymond James Financial, Inc.

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## BACKGROUND

Raymond James Tax Credit Funds, Inc. ("RJTCF") is a sponsor of, and retains an interest in, private equity funds ("Funds") that are designed primarily to promote the public welfare of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), including the welfare of low- and moderate income communities or families (such as providing housing, services, or jobs) in that the Funds promote investments in the development of housing for low- and moderate-income families that benefit from low-income housing tax credits as described in section 42 of the Internal Revenue Code of 1986 and/or qualified rehabilitation buildings or certified historic structures, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program (collectively, "Public Welfare Activities"). RJTCF, or a wholly owned affiliate of RJTCF, would be the general partner or managing member of such a Fund.

Generally under the proposed rule, certain limitations would be imposed on Funds sponsored by, or invested in by, banking entities. They are: (1) prohibiting the use by the fund of a name that is the same as, or a variation of, the name of the banking entity, (2) requiring certain disclosures to the investors, (3) limiting the percentage interests that the banking entity may have in the fund to 3% and limiting the total activity of the holding company and all of its affiliates to 3% of "Tier 1 Capital", and (4) limiting which directors or employees of the banking entity may take or retain an ownership interest in such a Fund. However, we believe the proposed rule makes it clear that Funds for Public Welfare Activities are not limited in the same manner as are other investments or sponsorships by banking entities. We seek confirmation on that point.

You have determined that, in addition to the acquisition or retention of an ownership interest in a Fund involved in a Public Welfare Activity, permitting a banking entity to act as a sponsor to those types of Funds "will provide valuable expertise and services to these types of entities, as well as help enable banking entities to provide valuable funding and assistance to small business and low- and moderate-income communities."<sup>1</sup> You have also determined that such an exemption was consistent with the safe and sound operation of banking entities, and would also promote the financial stability of the United States. We concur with your conclusions.

Thus, we read the proposed rule such that the 3% limitation would not be applicable to Funds for Public Welfare Activities. This would mean that neither RJTCF nor the customers of RJTCF who invest in its Funds are limited in the amount of investments they can make in Funds involving Public Welfare Activities (subject to safety and soundness restrictions that are imposed generally on all investment activities of a banking entity). Furthermore, the prohibition on the usage of a name similar to the name of the banking entity also would not be applicable to Funds involved in Public Welfare Activities. We seek your confirmation on these points as well.

The proposed rule makes it uncertain whether or not RJTCF would be prohibited from entering into certain "covered transactions" or "prohibited transactions" with Funds it sponsors.<sup>2</sup> The proposed rule prohibits certain "covered transactions" and "prohibited transactions" between banking entities and Funds it sponsors. As drafted, it is unclear whether the prohibitions apply: (1) both to Funds that are formed to undertake Public Welfare Activities and other funds; or (2) only to funds not involved in Public Welfare Activities. We respectfully request that you clarify that it was not your intention to prohibit such activities between a banking entity and a Fund sponsored by such banking entity if such Fund is involved in Public Welfare Activities.

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<sup>1</sup> See SEC, Notice, Release No. 34-65545, File No. S7-41-11, Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, Pg. 139.

<sup>2</sup> These activities are "covered transactions" under Section 23A of the Federal Reserve Act or "prohibited transactions" under Section 23B of the Federal Reserve Act.

## COMMENTARY

RJTCF comments on Questions 276 through 280 contained in the Notice of Proposed Rulemaking with Respect to the Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, as follows:

### Question 276

Is the proposed rule's approach to implementing the SBIC, public welfare and qualified rehabilitation investment exemption for acquiring or retaining an ownership interest in a covered fund effective? If not, what alternative approach would be more effective?

Comments re: Question 276: Generally speaking and assuming the requested confirmations noted below are obtained from you, RJTCF believes that the approach to implementing the SBIC, public welfare and qualified rehabilitation investment exemption for acquiring or retaining an ownership interest in a covered fund under the proposed rule will be effective. We concur that permitting a banking entity to act as a sponsor to those types of Public Welfare Activities provides valuable expertise and services to these types of entities and enables banking entities to provide critical and valuable funding and assistance to low-income communities. By sponsoring Funds, entities such as RJTCF facilitate the employment of financial resources in furtherance of the development of low-income housing for various communities. The Fund sponsor has developed an expertise in the low-income housing community and is readily able to act to provide needed financing to the low-income housing project while being able to facilitate the investment by banking entities in such types of investments. The sophistication provided by the sponsor of such funds assists in achieving the investors' financial and Community Reinvestment Act goals.

We request that you confirm our read of the proposed rule that: (a) investments involving the promotion of the development of low-income housing benefitting from the low-income housing tax credit as described in Section 42 of the Internal Revenue Code are investments designed primarily to promote the public welfare of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. §24), including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs), (b) the 3% limitation on ownership is not applicable to Funds for Public Welfare Activities, and (c) neither the sponsor of such Funds nor the customers of such Funds would be limited in the amount of investments they can make to Funds involving Public Welfare Activities (subject to safety and soundness restrictions that are imposed generally on all investment activities of a banking entity). Furthermore, we request that you confirm our read of the proposed rule that the prohibition on the usage of a name similar to the name of the banking entity also would not be applicable to Funds involved in Public Welfare Activities.

The sponsors of Funds for Public Welfare Activities need flexibility in order to structure such Funds so they are successful. That flexibility would be limited by the prohibition of "covered transactions" or "prohibited transactions." The proposed rule prohibits certain "covered transactions" and "prohibited transactions" between banking entities and the Funds it sponsors. As drafted, it is unclear whether the prohibitions apply: (1) both to Funds that are formed to undertake Public Welfare Activities and other funds; or (2) only to funds not involved in Public Welfare Activities. You should clarify that it was not your intention to prohibit such activities between a banking entity and a Fund involved in Public Welfare Activities that it sponsors. Without such a clarification, activities that are beneficial to the Public Welfare Activities arguably could be prohibited. We believe that such an unintended consequence was not contemplated and that "covered transactions" and "prohibited transactions" should be permitted between the sponsors of Funds involved in Public Welfare Activities and those Funds. We request that you clarify that "covered transactions" and "prohibited transactions" are permissible between Funds involved in Public Welfare Activities and their sponsors.

Without such a clarification, sponsors of Funds that invest in Public Welfare Activities would be uncertain whether or not they could engage in the following “covered transactions” or “prohibited transactions”—activities that could facilitate the development of low-income housing and the investment therein by financial institutions in furtherance of their Community Reinvestment Act obligations.

1. A loan or extension of credit to a Fund- Advances made by a sponsor of a Fund formed for Public Welfare Activities are often necessary so that the Fund can make investments with developers of low-income housing projects before an investor or investors in the Fund approve of the particular deal or make an investment in the Fund. This permits the development of the low-income housing project to proceed in due course while the Fund sponsor finalizes the investment by investors in the Fund. A delay in the investment by a Fund in a project partnership otherwise could slow the housing development process and could cause the project to fail to satisfy the stringent timelines imposed of low-income housing tax credit projects by the low-income tax credit provisions of the Internal Revenue Code. The result could be that the low-income housing project could fail to be entitled to receive the benefits of the low-income housing tax credits – one of the financial goals of the investors in the Fund.

2. A purchase of assets from the Fund- A sponsor of a Fund investing in Public Welfare Activities would not be permitted to purchase assets of the Fund. This prohibition would make it impossible for the sponsor of the Fund investing in Public Welfare Activities from acquiring an asset of such Fund. This limits the flexibility of the sponsor of the Fund in providing the investors with an investment meeting the investor’s criteria. If the Fund acquires an interest in a low-income housing project that is objected to by a potential investor in the Fund, without this restriction, the sponsor of the Fund could acquire the Fund’s interest in that project and then the potential investor could make the investment in the Fund. The Fund sponsor could then sell the investment to another Fund in which the investors find the specific low-income housing project to be an acceptable investment. The restriction, if applicable to Funds investing in Public Welfare Activities, would limit such flexibility.

3. The acceptance by a Fund sponsor of securities of the Fund as collateral security- If a sponsor of a Fund investing in Public Welfare Activities ever financed capital contributions to be made by investors in the Fund and the obligation to repay the sponsor is secured by interests in the Fund then, if the prohibitions are applicable to Funds investing in Public Welfare Activities, such a financing would be prohibited. Again, the prohibited activity limits the flexibility of the sponsor of the Fund in structuring the investment without any corresponding benefit to the Fund. Such a prohibition does not further the safe and sound operation of the banking entities nor does the prohibition promote the financial stability of the United States.

4. The issuance of a guarantee, acceptance or letter of credit on behalf of the Fund- Under certain circumstances, the sponsor of a Fund investing in Public Welfare Activities might subject a portion of its fee to forfeiture if a targeted internal rate of return is not achieved. We do not believe that such an arrangement should constitute a “guarantee” as that term is used in Sections 23A or 23B of the Federal Reserve Act and, if clarification is not made that prohibitions of the “covered transactions” and “prohibited transactions” are not applicable to Funds investing in Public Welfare Activities, we request that you nevertheless confirm that such a forfeiture of part of a sponsor’s fee does not constitute a “guarantee” under the prohibitions of Sections 23A or 23B of the Federal Reserve Act.

Furthermore, there could be situations where investors in Funds might, based on the economic situation at the time, be unwilling to invest in a Fund sponsoring Public Welfare Activities without some type of guarantee. Thus, the inability of the sponsor of such a Fund to offer a guarantee to

an investor could limit capital being available for the promotion of the Public Welfare Activities under such economic situations.

We believe that the general restrictions that an activity cannot result, directly or indirectly, in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy, or pose a threat to the safety and soundness of the banking entity or the financial stability of the United States appropriately limit the scope of such guarantees, if issued. This would require that a sponsor of a Fund that invests in Public Welfare Activities not only to consider the type of guarantee necessary to attract investors to such a Fund but also to consider the impact of such guarantee on the safety and soundness of the banking entity and the impact of such a guarantee on the financial stability of the United States. The regulators could then review the guarantee on a case-by-case basis rather than to provide for a general prohibition of guarantees. This appears to us to be a more balanced approach that provides the flexibility needed by the sponsors of such Funds while permitting reasonable regulatory oversight.

5. Transactions between a banking entity and a Fund must be on terms and under circumstances, including credit standards, that are substantially the same or at least as favorable to the banking entity as those prevailing at the time for comparable transactions that would apply to Funds not sponsored by the banking entity. We do not believe that such a requirement would have an adverse impact of the sponsorship and promotion of Funds investing in Public Welfare Activities.

6. A banking entity must not publish any advertisement or enter into any agreement stating or suggesting that it in any way is responsible for the obligations of the Funds it sponsors. In most cases, the sponsor of Funds sponsoring investments in Public Welfare Activities will retain an interest in the Fund and will undertake managerial activities of the Fund (such as the general partner or as a managing member). Such sponsors are careful not to become responsible for the obligations of the Fund. We believe that such a limitation of obligations is appropriate. However, the final rule should make clear that any reference to a guarantee made to investors of the Fund that is otherwise permitted by the final rule (as discussed under #4 above) should not be construed to be a suggestion that the sponsor is responsible for the obligations of the Funds that it sponsors.

#### Question 277

Should the approach include other elements? If so, what elements and why? Should any of the proposed elements be revised or eliminated? If so, why and how?

Comments re: Question 277: The approach should make clear that the limitations of Sections 23A or 23B of the Federal Reserve Act are not applicable to Funds that invest in Public Welfare Activities as discussed above. See response to Question 276 above.

#### Question 278

Should the proposed rule permit a banking entity to sponsor an SBIC and other identified public interest investments? Why or why not? Does the Agencies' determination under Section 13(d)(1)(J) of the BHC Act regarding sponsoring of an SBIC, public welfare or qualified rehabilitation investment effectively promote and protect the safety and soundness of banking entities and the financial stability of the United States? If not, why not?

Comments re: Question 278: Yes, the proposed rule should permit a banking entity to sponsor an SBLIC and other identified public interest investments. The financial stability of the United States is based in part on making safe, secure, and affordable housing available to American families. Without such housing, for example, low-income laborers living in high median income communities would not be readily available to provide necessary services to that community. The

proposed rule promotes the congressionally recognized national goal that “every American family be able to afford a decent home in a suitable environment.”<sup>3</sup>

A banking entity has valuable expertise, skills, and services that facilitate the structuring, sponsorship, and investment in Funds that invest in Public Welfare Activities. Local developers of low-income housing generally do not have the resources to locate multiple investors for each of its low-income housing developments. The developers’ expertise is focused on locating appropriate land for the development of the project, evaluating the market for the housing, obtaining the necessary permits and licenses for the development of the project, obtaining necessary utilities to support the project, and managing the day-to-day construction and management activities for the project.

The developers rely on the sponsors of Funds that invest in Public Welfare Activities to find those various corporate (banking and non-banking) entities that are willing to invest in the developments, to educate such investors on the benefits of such investments in Public Welfare Activities, and to provide such investors with asset management services so that the investors are informed on the operations of such Public Welfare Activities. The sponsor acts as a critical middleman to the raising of funds and the development of the low-income housing projects. Many of the investors in such Public Welfare Activities (most notably smaller banking entities) do not have the resources to dedicate to finding, evaluating, and investing in low-income housing projects. By utilizing the services of a banking entity that sponsors Funds investing in Public Welfare Activities, the smaller banking entities can leverage their resources in meeting their obligations under the Community Reinvestment Act.

#### Question 279

What would the effect of the proposed rule be on a banking entity’s ability to sponsor and syndicate funds supported by public welfare investments or low income housing tax credits which are utilized to assist banks and other insured depository institutions with meeting their Community Reinvestment Act (“CRA”) obligations?

Comments re: Question 279: The proposed rule (with the clarifications requested (a) under Question 276 above, and (b) that the activities that are “covered transactions” under Section 23A of the Federal Reserve Act or “prohibited transactions” under Section 23B of the Federal Reserve Act do not limit Funds that invest in Public Welfare Activities) facilitates financial institutions in meeting their CRA obligations. The proposed rule correctly identifies the area of Public Welfare Activities as one where restrictions should be relaxed in order to facilitate that Public Welfare Activity consistent with safe and sound operation of banking entities and the promotion of the financial stability of the United States. Many smaller financial entities have limited knowledge on the development of low-income housing and they rely on the sponsors of Funds promoting Public Welfare Activities in helping them make investments that not only satisfy their CRA obligations but also strengthen the financial stability of the United States. Again, we note the importance of providing the utmost flexibility to sponsors of Funds promoting Public Welfare Activities (subject to safety and soundness standards) and suggest that the limitations that would otherwise be applicable under Sections 23A and 23B of the Federal Reserve Act should not be limitations on Funds that promote Public Welfare Activities.

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<sup>3</sup> 42 U.S.C. 12701.

Question 280

Does the proposed rule unduly constrain a banking entity's ability to meet the convenience and needs of the community through CRA or other public welfare investments or services? If so, why and how could the proposed rule be revised to address this concern?

Comments re: Question 280: As drafted and without clarification that the activities that are "covered transactions" under Section 23A of the Federal Reserve Act or "prohibited transactions" under Section 23B of the Federal Reserve Act do not limit Funds investing in Public Welfare Activities, the proposed rule unduly constrains a banking entity's ability to meet the convenience and needs of the community through CRA or other public welfare investments or services.

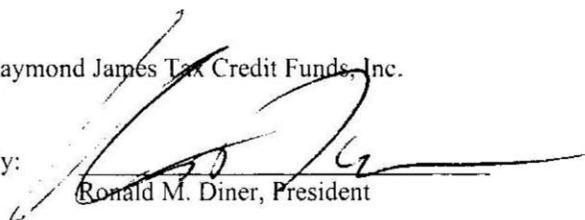
As discussed above in our Comments to Question 276, sponsors of Funds investing in Public Welfare Activities need the flexibility to undertake certain activities that could be construed as otherwise being prohibited. Such uncertainty in the interpretation of the proposed rule would have a chilling effect on the sponsors of Funds that invest in Public Welfare Activities. You can eliminate that chilling effect and should affirmatively state in the final rule that activities that constitute "covered transactions" under Section 23A of the Federal Reserve Act or "prohibited transactions" under Section 23B of the Federal Reserve Act are permissible activities if undertaken by banking entities that are sponsors of Funds investing in Public Welfare Activities in furtherance of such activities.

We appreciate this opportunity to provide comments as provided for in the Notice of Proposed Rulemaking. If you have further questions on our commentary, please feel free to contact William K. Budd, Associate Corporate Counsel, Raymond James Tax Credit Funds, Inc., 880 Carillon Parkway, Dept. 20485, Saint Petersburg, Florida 33716 (E-Mail: [Bill.Budd@raymondjames.com](mailto:Bill.Budd@raymondjames.com); Telephone: (727) 567-4820).

Respectfully yours,

Raymond James Tax Credit Funds, Inc.

By:

  
Ronald M. Diner, President