July 5, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, (SEC File Number S7–41–11; OCC Docket ID OCC-2011-14; Federal Reserve Docket No. R-14[•] and RIN 7100 AD[•]; FDIC RIN number 3064-AD85)

Dear Ms. Murphy:

The Loan Syndications and Trading Association (**LSTA**)[1] is grateful to the staff of the Securities and Exchange Commission (**SEC**) for taking the time to meet with us on March 13, 2012[2] to discuss the Notice of Proposed Rulemaking on Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (**Proposed Volcker Rule**). In response to the staff's request, we are pleased to submit proposed language that would ensure that collateralized loan obligations that meet certain conditions (**Corporate Loan Securitizations**) will be treated like other loan securitizations and will not inadvertently be omitted from the definition of loan securitization in the final rules.

Appendix A includes three alternative proposals. Appendix B lays out how each of these proposals would change the language as currently drafted in the Proposed Volcker Rule. As we

[1] The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication, and trading of commercial loans. The 318 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers, and other institutional lenders, as well as service providers and vendors. The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures, and documentation to enhance market efficiency, transparency, and certainty.

[2] The LSTA met with staff from the SEC's Divisions of Investment Management, Trading and Markets, Corporation Finance, and Risk, Strategy and Financial Innovation. A record of the meeting is available at http://www.sec.gov/comments/s7-41-11/s74111-540.pdf.

366 Madison Avenue, 15th Floor, New York, NY 10017
Tel: 212.880.3000 Fax. 212.880.3040 www.lsta.org.

discussed in our comment letter on the Proposed Volcker Rule,[3] we believe that the Agencies'[4] proposed definition of covered funds is overly broad and that it should not include investment structures that have virtually nothing in common with hedge funds or private equity funds, such as asset-backed securitization vehicles. Accordingly, Alternative 1 in Appendix A proposes language to amend proposed §__.10(b)(1) by excluding asset-backed securities from the definition of covered funds.

If the Agencies decline to adopt Alternative 1, however, we have suggested in Alternative 2 language that would amend the Proposed Volcker Rule to exclude Corporate Loan Securitizations from the definition of covered funds, consistent with the statutory rule of construction that nothing in the Volcker Rule may limit or restrict the securitization of loans.[5] Alternative 2 would amend proposed §__.10(b)(1) by adding an exclusion for loan securitizations from the definition of covered funds. It would then add a new paragraph (r) to the definitions in proposed §__.2, and renumber current paragraphs (r) through (bb) as (s) through (cc). New paragraph (r) would define loan securitization to include corporate loan securitizations. Under this Alternative, the references to loan securitizations, which would no longer be deemed covered funds, would be removed from the permitted activities provisions of §§__.13 and __.14.

We refer you to the LSTA Comment Letter and reiterate the points made therein as to why loan securitizations should not be treated as covered funds.[6] Should the Agencies nevertheless decline to exclude loan securitizations from the covered fund definition, however, proposed Alternative 3 would ensure that, at the very least, Corporate Loan Securitizations would be expressly included in the permitted activities of §§__.13 and __.14. This Alternative would

---

[3] LSTA Letter RE: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, Feb. 13, 2012 (**LSTA Comment Letter**), *available at* http://www.sec.gov/comments/s7-41-11/s74111-264.pdf.

[4] The Agencies include the SEC, the Federal Reserve Board (**Federal Reserve**), the Office of the Comptroller of the Currency (**OCC**), and the Federal Deposit Insurance Corporation (**CFTC**). The Commodity Futures Trading Commission (**CFTC**) issued a separate proposed rulemaking on Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Covered Funds (Feb. 14, 2012), and will also receive a copy of this letter.

[5] Section 13(g)(2) of the Bank Holding Company Act of 1956, as added by the Dodd-Frank Act ( Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203), provides:

> SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity . . . to sell or securitize loans in a manner otherwise permitted by law.

As used in this letter, the "Volcker Rule" refers both to Section 619 of the Dodd-Frank Act (Section 13 of the Bank Holding Company Act) and to the final rules that will be promulgated thereunder.

[6] We again urge the Agencies to follow the statutory mandate to ensure that their rules in no way limit or restrict loan securitizations. Because of the many consequences that would attach to loan securitizations if they are not excluded from the covered fund definition, and for all the reasons discussed in the LSTA Comment Letter, we believe that the statute requires that loan securitizations be entirely excluded from the reach of the Volcker Rule.

amend §§__.13(d) and __.14((a)(v) to define Corporate Loan Securitizations and include such securitizations in the definition of loan securitization.

We very much appreciate your consideration of our additional comments. Please feel free to contact Elliot Ganz at (212) 880-3003 or Meredith Coffey at (212) 880-3019 if you have any questions regarding our comments.

Sincerely,

R. Bram Smith
Executive Director
Loan Syndications and Trading Association

cc: Jennifer J. Johnson, Secretary, Federal Reserve Board
Robert E. Feldman, Executive Secretary, FDIC
Office of the Comptroller of the Currency
David Stawick, Secretary, CFTC
Tram Nguyen, SEC Division of Investment Management
Josephine Tao, SEC Division of Trading and Markets
David Beaning, SEC Division of Corporation Finance
Adam Glass, SEC Division of Risk, Strategy and Financial Innovation

## APPENDIX A

**Alternative 1 (Preferred): "Covered Funds" do not include "Asset-Backed Securities."**

PROPOSED LANGUAGE for Alternative 1

**Subpart C – Covered Funds Activities and Investments**

**§__.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

(b) Definitions. For purposes of this part:

(1) Covered fund means:

(i) An issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7));

(ii) A commodity pool, as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) Any issuer, as defined in section 2(a)(22) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(22)), that is organized or offered outside of the United States that would be a covered fund as defined in paragraphs (b)(1)(i), (ii), or (iv) of this section, were it organized or offered under the laws, or offered to one or more residents, of the United States or of one or more States; and

(iv) Any such similar fund as the appropriate Federal banking agencies, the SEC, and the CFTC may determine, by rule, as provided in section 13(b)(2) of the BHC Act.

(2) Exclusion. Notwithstanding paragraph (b)(1) of this section, a covered fund does not include an asset-backed security, as defined in Section 3(a)(79) of the Securities Exchange Act of 1934.

**<u>Alternative 2 (preferred if Alternative 1 is not adopted)</u>: "Covered Funds" do not include "Loan Securitizations."**

Steps to amending rule as proposed:

1. Add exclusion for "loan securitizations" to "covered fund" definition in proposed §__.10(b).

2. Move sections on "loan securitization" from proposed §__.13(d) and §__.14((a)(v) to proposed §__.2 as new (r). Renumber proposed (r) through (bb) as new (s) through (cc).

3. Thus, §§__.13 and __.14 will no longer include loan securitizations as permitted activities.

---

<u>PROPOSED LANGUAGE for Alternative 2</u>

**Subpart C – Covered Funds Activities and Investments**

**§__.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

(b) Definitions. For purposes of this part:

(1) <u>Covered fund</u> means:

(i) An issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7));

(ii) A commodity pool, as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) Any issuer, as defined in section 2(a)(22) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(22)), that is organized or offered outside of the United States that would be a covered fund as defined in paragraphs (b)(1)(i), (ii), or (iv) of this section, were it organized or offered under the laws, or offered to one or more residents, of the United States or of one or more States; and

(iv) Any such similar fund as the appropriate Federal banking agencies, the SEC, and the CFTC may determine, by rule, as provided in section 13(b)(2) of the BHC Act.

(2) <u>Exclusion</u>. Notwithstanding paragraph (b)(1) of this section, a covered fund does not include a loan securitization, as defined in §__.2(r).

**§__.2 Definitions.**

**… [move from §§__.13 and __.14 and modify as shown in Appendix B]**

(r) Loan securitization means:

(1) an asset-backed security, the assets or holdings of which are solely comprised of:

(i) Loans;

(ii) Contractual rights or assets directly arising from those loans supporting the asset-backed securities; and

(iii) Interest rate or foreign exchange derivatives that:

(1) Materially relate to the terms of such loans or contractual rights or assets; and

(2) Are used for hedging purposes with respect to the securitization structure.

(2) a corporate loan securitization. A corporate loan securitization means a special purpose entity that issues debt and equity interests and:

(i) For any such entity in existence as of [INSERT effective date of the Final Rules], at least 70 percent of whose assets consist of loans, provided that:

(A) if, at any time, such entity is not in compliance with this paragraph (2)(i), it may not purchase any assets other than loans until such time as it is once again in compliance with this paragraph; or

(ii) For any other such entity, whose assets meet all of the following conditions:

(A) They are required by the entity's transaction documents to be and are comprised of at least 90 percent of senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par and must exclude from the 90 percent calculation government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests, provided that:

(1) If at any time such entity is not in compliance with this paragraph (2)(ii)(A), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(B) The aggregate outstanding principal amount of its assets is required by the entity's transaction documents to be and is comprised of not more than 10 percent corporate credit obligations other than senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par, and must exclude from the

10 percent calculation government obligations used to credit enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions and workout interests, provided that:

(1) if at any time such entity is not in compliance with this paragraph 2(ii)(B), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(C) They are limited to senior, secured syndicated loans, other corporate credit obligations, temporary investments, government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests.

(D) They are not asset-backed security interests or derivatives, provided that nothing herein shall prohibit a corporate loan securitization from acquiring a loan participation or any interest in or relating to a letter of credit or from entering into a hedge transaction.

(3) Definitions. For purposes of this section:

(i) Hedge transactions means interest rate swaps, currency swaps, timing swaps, basis swaps, caps, floors and collars and similar transactions for the purpose of hedging related exposures and not for the purpose of obtaining exposure to a corporate credit obligation.

(ii) Corporate credit obligation means an obligation of a borrower (A) organized as a corporation, partnership, limited liability company, statutory trust or similar entity, (B) that is engaged in one or more business activities and (C) is not an asset-backed security interest.

(iii) Senior, secured syndicated loan means a loan made to a commercial borrower that:

(A) is not and cannot by its terms become subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,

(B) is secured by a valid first priority perfected security interest or lien in or on specified collateral securing the obligor's obligations under the loan (subject to customary exceptions for permitted liens), and

(C) the value of the collateral subject to such security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the commercially reasonable judgment of the manager exercised at the time of investment) to repay the loan in accordance with its terms and to repay all

other indebtedness of equal seniority secured by a security interest or lien in or on the same collateral.

(iv) Temporary investments means investments held by a corporate loan securitization prior to investing or reinvesting in senior, secured syndicated loans and other corporate credit obligations and/or making payments it owes on its debt and equity interests which may be in the form of:

(A) United States dollars;

(B) direct obligations of, and obligations fully guaranteed as to full and timely payment by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States);

(C) demand deposits, time deposits or certificates of deposit of depository institutions or trust companies incorporated under the laws of the United States or any state thereof and subject to supervision and examination by federal or state banking or depository institution authorities; provided that at the time of the corporate loan securitization's investment or contractual commitment to invest therein, the commercial paper, if any, and short-term unsecured debt obligations (other than such obligation whose rating is based on the credit of a person other than such institution or trust company) of such depository institution or trust company shall have a credit rating in the highest required investment category;[1]

(D) corporate, non-extendable commercial paper having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating in the highest required investment category;

(E) demand deposits, time deposits or certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and either have a rating on their certificates of deposit or short-term deposits in the highest required investment category;

(F) notes that are payable on demand or bankers' acceptances issued by any depository institution or trust company referred to in subparagraph (C) of this paragraph;

[1] All references herein to credit ratings will need to be revised to reflect the SEC's final rules on alternatives to the use of credit ratings, as required by Section 939A of the Dodd-Frank Act. While the OCC's recently-adopted final rule and guidance on alternatives to the use of credit ratings with respect to permissible investments by national banks and federal savings associations could provide a framework for the definitions proposed in this Appendix, we believe the better approach would be to wait for the issuance by the SEC of its standards of creditworthiness. *See* Final Rule, "Alternatives to the Use of External Credit Ratings in the Regulations of the OCC," 77 Fed. Reg. 35253 (Jun. 13, 2012); Final Guidance, "Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment," 77 Fed. Reg. 35259 (Jun. 13, 2012).

(G) investments in money market funds or other regulated investment companies having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(H) time deposits (having maturities of not more than 90 days) by an entity the commercial paper of which has, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(I) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in subparagraph (C) of this paragraph with a rating of the highest required investment category; or

(J) other investments with a maturity one year or less with a rating of the highest required investment category.

(v) Workout interests means equity interests and corporate credit obligations obtained as a result of a workout, restructuring, bankruptcy, or similar transaction or proceeding in connection with an asset held or that had previously been held by a corporate loan securitization.

**<u>Alternative 3</u>: Corporate Loan Securitizations are included in definition of "Loan Securitizations" but loan securitizations are not excluded from definition of "Covered Funds."**

Steps to amending rule as proposed under this alternative:

1. Amend section on "loan securitizations" in proposed §__.13(d) and §__.14((a)(v) to include definition of "corporate loan securitization." Thus, loan securitizations, including corporate loan securitizations, would continue to be covered funds but would also continue to be permitted activities.

---

<u>PROPOSED LANGUAGE for Alternative 3</u>

**Subpart C – Covered Funds Activities and Investments**

. . .

**§__.13**

. . .

(d) <u>Loan securitizations</u>. The prohibition contained in § __.10(a) does not apply with respect to the acquisition or retention by a covered banking entity of any ownership interest in, or acting as sponsor to, a covered fund that is a loan securitization, which means: An issuer of asset-backed securities, the assets or holdings of which are:

(1) Solely comprised of:

(i) Loans;

(ii) Contractual rights or assets directly arising from those loans supporting the asset-backed securities; and

(iii) Interest rate or foreign exchange derivatives that:

(A) Materially relate to the terms of such loans or contractual rights or assets; and

(B) Are used for hedging purposes with respect to the securitization structure; or

(2) a corporate loan securitization. A corporate loan securitization means a special purpose entity that issues debt and equity interests and:

(i) For any such entity in existence as of [INSERT effective date of the Final Rules], at least [70 percent] of whose assets consist of loans, provided that:

(A) if, at any time, such entity is not in compliance with this paragraph (2)(i), it may not purchase any assets other than loans until such time as it is once again in compliance with this paragraph; or

(ii) For any other such entity, whose assets meet all of the following conditions:

(A) They are required by the entity's transaction documents to be and are comprised of at least 90 percent of senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par and must exclude from the 90 percent calculation government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests, provided that:

(1) If at any time such entity is not in compliance with this paragraph (2)(ii)(A), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(B) The aggregate outstanding principal amount of its assets is required by the entity's transaction documents to be and is comprised of not more than 10 percent corporate credit obligations other than senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par, and must exclude from the 10 percent calculation government obligations used to credit enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions and workout interests, provided that:

(1) if at any time such entity is not in compliance with this paragraph 2(ii)(B), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(C) They are limited to senior, secured syndicated loans, other corporate credit obligations, temporary investments, government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests.

(D) They are not asset-backed security interests or derivatives, provided that nothing herein shall prohibit a corporate loan securitization from acquiring a loan participation or any interest in or relating to a letter of credit or from entering into a hedge transaction.

(3) Definitions. For purposes of this section:

(i) Hedge transactions means interest rate swaps, currency swaps, timing swaps, basis swaps, caps, floors and collars and similar transactions for the purpose of hedging related exposures and not for the purpose of obtaining exposure to a corporate credit obligation.

(ii) Corporate credit obligation means an obligation of a borrower (A) organized as a corporation, partnership, limited liability company, statutory trust or similar entity, (B) that is engaged in one or more business activities and (C) is not an asset-backed security interest.

(iii) Senior, secured syndicated loan means a loan made to a commercial borrower that:

> (A) is not and cannot by its terms become subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,
>
> (B) is secured by a valid first priority perfected security interest or lien in or on specified collateral securing the obligor's obligations under the loan (subject to customary exceptions for permitted liens), and
>
> (C) the value of the collateral subject to such security interest or lien, together with other attributes of the obligor (including, without limitation, its general flnancial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the commercially reasonable judgment of the manager exercised at the time of investment) to repay the loan in accordance with its terms and to repay all other indebtedness of equal seniority secured by a security interest or lien in or on the same collateral.

(iv) Temporary investments means investments held by a corporate loan securitization prior to investing or reinvesting in senior, secured syndicated loans and other corporate credit obligations and/or making payments it owes on its debt and equity interests which may be in the form of

> (A) United States dollars;
>
> (B) direct obligations of, and obligations fully guaranteed as to full and timely payment by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States);
>
> (C) demand deposits, time deposits or certificates of deposit of depository institutions or trust companies incorporated under the laws of the United States or any state thereof and subject to supervision and examination by federal or state banking or depository institution authorities; provided that at the time of the corporate loan securitization's investment or contractual

commitment to invest therein, the commercial paper, if any, and short-term unsecured debt obligations (other than such obligation whose rating is based on the credit of a person other than such institution or trust company) of such depository institution or trust company shall have a credit rating in the highest required investment category;[2]

(D) corporate, non-extendable commercial paper having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating in the highest required investment category;

(E) demand deposits, time deposits or certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and either have a rating on their certificates of deposit or short-term deposits in the highest required investment category;

(F) notes that are payable on demand or bankers' acceptances issued by any depository institution or trust company referred to in subparagraph (C) of this paragraph;

(G) investments in money market funds or other regulated investment companies having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(H) time deposits (having maturities of not more than 90 days) by an entity the commercial paper of which has, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(I) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in subparagraph (C) of this paragraph with a rating of the highest required investment category; or

(J) other investments with a maturity one year or less with a rating of the highest required investment category.

---

[2] All references herein to credit ratings will need to be revised to reflect the SEC's final rules on alternatives to the use of credit ratings, as required by Section 939A of the Dodd-Frank Act. While the OCC's recently-adopted final rule and guidance on alternatives to the use of credit ratings with respect to permissible investments by national banks and federal savings associations could provide a framework for the definitions proposed in this Appendix, we believe the better approach would be to wait for the issuance by the SEC of its standards of creditworthiness. *See* Final Rule, "Alternatives to the Use of External Credit Ratings in the Regulations of the OCC," 77 Fed. Reg. 35253 (Jun. 13, 2012); Final Guidance, "Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment," 77 Fed. Reg. 35259 (Jun. 13, 2012).

(v) Workout interests means equity interests and corporate credit obligations obtained as a result of a workout, restructuring, bankruptcy, or similar transaction or proceeding in connection with an asset held or that had previously been held by a corporate loan securitization.

**§__.14**

(a) The prohibition contained in § __.10(a) does not apply to the acquisition or retention by a covered banking entity of any ownership interest in or acting as sponsor to:

. . .

(2) Certain other covered funds.

. . .

(v) A loan securitization, as defined in §__.13(d).

## APPENDIX B

The alternatives below show how the proposed language would modify the language as currently drafted in the Agencies' Proposed Volcker Rule.

**Alternative 1 (Preferred): "Covered Funds" do not include "Asset-Backed Securities."**

PROPOSED LANGUAGE for Alternative 1

**Subpart C – Covered Funds Activities and Investments**

**§__.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

(b) Definitions. For purposes of this part:

(1) Covered fund means:

(i) An issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7));

(ii) A commodity pool, as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) Any issuer, as defined in section 2(a)(22) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(22)), that is organized or offered outside of the United States that would be a covered fund as defined in paragraphs (b)(1)(i), (ii), or (iv) of this section, were it organized or offered under the laws, or offered to one or more residents, of the United States or of one or more States; and

(iv) Any such similar fund as the appropriate Federal banking agencies, the SEC, and the CFTC may determine, by rule, as provided in section 13(b)(2) of the BHC Act.

(2) Exclusion. Notwithstanding paragraph (b)(1) of this section, a covered fund does not include an asset-backed security, as defined in Section 3(a)(79) of the Securities Exchange Act of 1934.

**<u>Alternative 2 (preferred if Alternative 1 is not adopted)</u>: "Covered Funds" do not include "Loan Securitizations."**

Steps to amending rule as proposed:

1. Add exclusion for "loan securitizations" to "covered fund" definition in proposed §__.10(b).

2. Move sections on "loan securitization" from proposed §__.13(d) and §__.14((a)(v) to proposed §__.2 as new (r). Renumber proposed (r) through (bb) as new (s) through (cc).

3. Thus, §§__.13 and __.14 will no longer include loan securitizations as permitted activities.

---

<u>PROPOSED LANGUAGE for Alternative 2</u>

**Subpart C – Covered Funds Activities and Investments**

**§__.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.**

(b) Definitions. For purposes of this part:

(1) <u>Covered fund</u> means:

(i) An issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7));

(ii) A commodity pool, as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) Any issuer, as defined in section 2(a)(22) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(22)), that is organized or offered outside of the United States that would be a covered fund as defined in paragraphs (b)(1)(i), (ii), or (iv) of this section, were it organized or offered under the laws, or offered to one or more residents, of the United States or of one or more States; and

(iv) Any such similar fund as the appropriate Federal banking agencies, the SEC, and the CFTC may determine, by rule, as provided in section 13(b)(2) of the BHC Act.

<u>(2) Exclusion. Notwithstanding paragraph (b)(1) of this section, a covered fund does not include a loan securitization, as defined in §__.2(r).</u>

**§__.2 Definitions.**

**… [move from §§__.13 and __.14 and modify as shown]**

(rd) Loan securitizations. The prohibition contained in § ___.10(a) does not apply with respect to the acquisition or retention by a covered banking entity of any ownership interest in, or acting as sponsor to, a covered fund that is an issuer ofmeans:

(1) an asset-backed securityies, the assets or holdings of which are solely comprised of:

(i1) Loans;

(ii2) Contractual rights or assets directly arising from those loans supporting the asset-backed securities; and

(iii3) Interest rate or foreign exchange derivatives that:

(i1) Materially relate to the terms of such loans or contractual rights or assets; and

(ii2) Are used for hedging purposes with respect to the securitization structure.

(2) a corporate loan securitization. A corporate loan securitization means a special purpose entity that issues debt and equity interests and:

(i) For any such entity in existence as of [INSERT effective date of the Final Rules], at least 70 percent of whose assets consist of loans, provided that:

(A) if, at any time, such entity is not in compliance with this paragraph (2)(i), it may not purchase any assets other than loans until such time as it is once again in compliance with this paragraph; or

(ii) For any other such entity, whose assets meet all of the following conditions:

(A) They are required by the entity's transaction documents to be and are comprised of at least 90 percent of senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par and must exclude from the 90 percent calculation government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests, provided that:

(1) If at any time such entity is not in compliance with this paragraph (2)(ii)(A), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(B) The aggregate outstanding principal amount of its assets is required by the entity's transaction documents to be and is comprised of not more than 10 percent corporate credit obligations other than senior, secured

syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par, and must exclude from the 10 percent calculation government obligations used to credit enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions and workout interests, provided that:

(1) if at any time such entity is not in compliance with this paragraph 2(ii)(B), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(C) They are limited to senior, secured syndicated loans, other corporate credit obligations, temporary investments, government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests.

(D) They are not asset-backed security interests or derivatives, provided that nothing herein shall prohibit a corporate loan securitization from acquiring a loan participation or any interest in or relating to a letter of credit or from entering into a hedge transaction.

(3) Definitions. For purposes of this section:

(i) Hedge transactions means interest rate swaps, currency swaps, timing swaps, basis swaps, caps, floors and collars and similar transactions for the purpose of hedging related exposures and not for the purpose of obtaining exposure to a corporate credit obligation.

(ii) Corporate credit obligation means an obligation of a borrower (A) organized as a corporation, partnership, limited liability company, statutory trust or similar entity, (B) that is engaged in one or more business activities and (C) is not an asset-backed security interest.

(iii) Senior, secured syndicated loan means a loan made to a commercial borrower that:

(A) is not and cannot by its terms become subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,

(B) is secured by a valid first priority perfected security interest or lien in or on specified collateral securing the obligor's obligations under the loan (subject to customary exceptions for permitted liens), and

(C) the value of the collateral subject to such security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the

commercially reasonable judgment of the manager exercised at the time of investment) to repay the loan in accordance with its terms and to repay all other indebtedness of equal seniority secured by a security interest or lien in or on the same collateral.

(iv) Temporary investments means investments held by a corporate loan securitization prior to investing or reinvesting in senior, secured syndicated loans and other corporate credit obligations and/or making payments it owes on its debt and equity interests which may be in the form of:

(A) United States dollars;

(B) direct obligations of, and obligations fully guaranteed as to full and timely payment by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States);

(C) demand deposits, time deposits or certificates of deposit of depository institutions or trust companies incorporated under the laws of the United States or any state thereof and subject to supervision and examination by federal or state banking or depository institution authorities; provided that at the time of the corporate loan securitization's investment or contractual commitment to invest therein, the commercial paper, if any, and short-term unsecured debt obligations (other than such obligation whose rating is based on the credit of a person other than such institution or trust company) of such depository institution or trust company shall have a credit rating in the highest required investment category;[1]

(D) corporate, non-extendable commercial paper having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating in the highest required investment category;

(E) demand deposits, time deposits or certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and either have a rating on their certificates of deposit or short-term deposits in the highest required investment category;

[1] All references herein to credit ratings will need to be revised to reflect the SEC's final rules on alternatives to the use of credit ratings, as required by Section 939A of the Dodd-Frank Act. While the OCC's recently-adopted final rule and guidance on alternatives to the use of credit ratings with respect to permissible investments by national banks and federal savings associations could provide a framework for the definitions proposed in this Appendix, we believe the better approach would be to wait for the issuance by the SEC of its standards of creditworthiness. *See* Final Rule, "Alternatives to the Use of External Credit Ratings in the Regulations of the OCC," 77 Fed. Reg. 35253 (Jun. 13, 2012); Final Guidance, "Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment," 77 Fed. Reg. 35259 (Jun. 13, 2012).

(F) notes that are payable on demand or bankers' acceptances issued by any depository institution or trust company referred to in subparagraph (C) of this paragraph;

(G) investments in money market funds or other regulated investment companies having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(H) time deposits (having maturities of not more than 90 days) by an entity the commercial paper of which has, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(I) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in subparagraph (C) of this paragraph with a rating of the highest required investment category; or

(J) other investments with a maturity one year or less with a rating of the highest required investment category.

(v) Workout interests means equity interests and corporate credit obligations obtained as a result of a workout, restructuring, bankruptcy, or similar transaction or proceeding in connection with an asset held or that had previously been held by a corporate loan securitization.

**Alternative 3: Corporate Loan Securitizations are included in definition of "Loan Securitizations" but loan securitizations are not excluded from definition of "Covered Funds."**

Steps to amending rule as proposed under this alternative:

1. Amend section on "loan securitizations" in proposed §__.13(d) and §__.14((a)(v) to include definition of "corporate loan securitization." Thus, loan securitizations, including corporate loan securitizations, would continue to be covered funds but would also continue to be permitted activities.

---

PROPOSED LANGUAGE for Alternative 3

**Subpart C – Covered Funds Activities and Investments**

. . .

**§__.13**

. . .

(d) Loan securitizations. The prohibition contained in § __.10(a) does not apply with respect to the acquisition or retention by a covered banking entity of any ownership interest in, or acting as sponsor to, a covered fund that is a loan securitization, which means: ~~a~~An issuer of asset-backed securities, the assets or holdings of which are:

(1) ~~s~~Solely comprised of:

(i~~1~~) Loans;

(~~2~~ii) Contractual rights or assets directly arising from those loans supporting the asset-backed securities; and

(~~3~~iii) Interest rate or foreign exchange derivatives that:

(~~i~~A) Materially relate to the terms of such loans or contractual rights or assets; and

(~~ii~~B) Are used for hedging purposes with respect to the securitization structure; or~~.~~

(2) a corporate loan securitization. A corporate loan securitization means a special purpose entity that issues debt and equity interests and:

(i) For any such entity in existence as of [INSERT effective date of the Final Rules], at least [70 percent] of whose assets consist of loans, provided that:

(A) if, at any time, such entity is not in compliance with this paragraph (2)(i), it may not purchase any assets other than loans until such time as it is once again in compliance with this paragraph; or

(ii) For any other such entity, whose assets meet all of the following conditions:

(A) They are required by the entity's transaction documents to be and are comprised of at least 90 percent of senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par and must exclude from the 90 percent calculation government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests, provided that:

(1) If at any time such entity is not in compliance with this paragraph (2)(ii)(A), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(B) The aggregate outstanding principal amount of its assets is required by the entity's transaction documents to be and is comprised of not more than 10 percent corporate credit obligations other than senior, secured syndicated loans and temporary investments. For purposes of this condition, all such assets must be valued at par, and must exclude from the 10 percent calculation government obligations used to credit enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions and workout interests, provided that:

(1) if at any time such entity is not in compliance with this paragraph 2(ii)(B), it may not purchase any assets other than senior, secured syndicated loans and temporary investments until such time as it is once again in compliance with this paragraph.

(C) They are limited to senior, secured syndicated loans, other corporate credit obligations, temporary investments, government obligations used to credit-enhance asset-backed security interests issued by a corporate loan securitization, hedge transactions, and workout interests.

(D) They are not asset-backed security interests or derivatives, provided that nothing herein shall prohibit a corporate loan securitization from acquiring a loan participation or any interest in or relating to a letter of credit or from entering into a hedge transaction.

(3) Definitions. For purposes of this section:

(i) Hedge transactions means interest rate swaps, currency swaps, timing swaps, basis swaps, caps, floors and collars and similar transactions for the purpose of hedging related exposures and not for the purpose of obtaining exposure to a corporate credit obligation.

(ii) Corporate credit obligation means an obligation of a borrower (A) organized as a corporation, partnership, limited liability company, statutory trust or similar entity, (B) that is engaged in one or more business activities and (C) is not an asset-backed security interest.

(iii) Senior, secured syndicated loan means a loan made to a commercial borrower that:

(A) is not and cannot by its terms become subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,

(B) is secured by a valid first priority perfected security interest or lien in or on specified collateral securing the obligor's obligations under the loan (subject to customary exceptions for permitted liens), and

(C) the value of the collateral subject to such security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the commercially reasonable judgment of the manager exercised at the time of investment) to repay the loan in accordance with its terms and to repay all other indebtedness of equal seniority secured by a security interest or lien in or on the same collateral.

(iv) Temporary investments means investments held by a corporate loan securitization prior to investing or reinvesting in senior, secured syndicated loans and other corporate credit obligations and/or making payments it owes on its debt and equity interests which may be in the form of:

(A) United States dollars;

(B) direct obligations of, and obligations fully guaranteed as to full and timely payment by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States);

(C) demand deposits, time deposits or certificates of deposit of depository institutions or trust companies incorporated under the laws of the United States or any state thereof and subject to supervision and examination by federal or state banking or depository institution authorities; provided that at the time of the corporate loan securitization's investment or contractual

commitment to invest therein, the commercial paper, if any, and short-term unsecured debt obligations (other than such obligation whose rating is based on the credit of a person other than such institution or trust company) of such depository institution or trust company shall have a credit rating in the highest required investment category;[2]

(D) corporate, non-extendable commercial paper having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating in the highest required investment category;

(E) demand deposits, time deposits or certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and either have a rating on their certificates of deposit or short-term deposits in the highest required investment category;

(F) notes that are payable on demand or bankers' acceptances issued by any depository institution or trust company referred to in subparagraph (C) of this paragraph;

(G) investments in money market funds or other regulated investment companies having, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(H) time deposits (having maturities of not more than 90 days) by an entity the commercial paper of which has, at the time of the corporate loan securitization's investment or contractual commitment to invest therein, a rating of the highest required investment category;

(I) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States, in either case entered into with a depository institution or trust company (acting as principal) described in subparagraph (C) of this paragraph with a rating of the highest required investment category; or

(J) other investments with a maturity one year or less with a rating of the highest required investment category.

---

[2] All references herein to credit ratings will need to be revised to reflect the SEC's final rules on alternatives to the use of credit ratings, as required by Section 939A of the Dodd-Frank Act. While the OCC's recently-adopted final rule and guidance on alternatives to the use of credit ratings with respect to permissible investments by national banks and federal savings associations could provide a framework for the definitions proposed in this Appendix, we believe the better approach would be to wait for the issuance by the SEC of its standards of creditworthiness. *See* Final Rule, "Alternatives to the Use of External Credit Ratings in the Regulations of the OCC," 77 Fed. Reg. 35253 (Jun. 13, 2012); Final Guidance, "Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment," 77 Fed. Reg. 35259 (Jun. 13, 2012).

(v) Workout interests means equity interests and corporate credit obligations obtained as a result of a workout, restructuring, bankruptcy, or similar transaction or proceeding in connection with an asset held or that had previously been held by a corporate loan securitization.

**§__.14**

(a) The prohibition contained in § __.10(a) does not apply to the acquisition or retention by a covered banking entity of any ownership interest in or acting as sponsor to:

. . .

(2) Certain other covered funds.

. . .

(v) A covered loan securitization, as defined in § __.13(d). fund that is an issuer of asset-backed securities described in § __.13(d), the assets or holdings of which are solely comprised of:

(A) Loans;

(B) Contractual rights or assets directly arising from those loans supporting the asset-backed securities; and

(C) Interest rate or foreign exchange derivatives that:

(1) Materially relate to the terms of such loans or contractual rights or assets, and
(2) Are used for hedging purposes with respect to the securitization structure.