United States Senate

WASHINGTON, DC 20510

April 13, 2012

The Honorable Benjamin Bernanke
Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

The Honorable Thomas J. Curry
Comptroller of the Currency
Administrator of National Banks
Washington, D.C. 20219

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Dear Chairman Bernanke, Acting Chairman Gruenberg, Chairman Schapiro, Comptroller Curry, and Chairman Gensler:

The undersigned are Senate Democrats who support the Dodd-Frank Act, including new Section 13 of the Bank Holding Company Act, otherwise known as the "Volcker Rule." We fully support the goals of the Volcker Rule, which places restrictions on banks regarding proprietary trading and relationships with hedge funds and private equity funds.

As strong supporters of the Volcker Rule, we also want to emphasize that the final rules should treat certain insurance company investments in these funds using money from their general accounts in a manner consistent with Congress's intent. These investments, when conducted by state-regulated companies, can be an appropriate and important part of an insurer's investment strategy.

The Committee Report on the *Restoring American Financial Stability Act of 2010* – the Senate-passed legislation which contained the original version of this language – states that one goal of the Volcker Rule provision is "appropriately accommodating the business of insurance within insurance companies subject to State insurance company investment laws."[1] In light of this statement, the key test should be whether an investment is permitted by State insurance company investment law. Provided that investments in hedge and private equity funds are permissible under state law, they should be permitted under the Volcker Rule.

Section 13(d)(1)(F) exempts from the prohibitions of Section 13(a)(1) regulated insurance companies directly engaged in the business of insurance when making purchases consistent with State insurance laws. Section 6(c) of the proposed rules exempts from the proprietary trading prohibition insurance companies that are: (1) subject to state insurance regulation; (2) making investments from their general account; and (3) complying with home-state insurance investment laws, regulations and guidance.[2] But

[1] S. Rep. 111-176 at 90 (Apr. 30, 2010).
[2] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 76 Fed. Reg. 68846, 68949 (Nov. 7, 2011).

the exemption in the proposed rules does not extend to state-regulated insurance companies' general account investments in hedge funds or private equity funds.

Section 13(a)(1) prohibits both proprietary trading and fund investment, making no distinction between, nor showing any preference for, the risks presented by either activity. The "permitted activities" subsection of Section 13 applies to the activities enumerated in subsection (a) generally, the first paragraph of which prohibits both proprietary trading *and* investments in hedge or private equity funds. The language in Section 13(d)(1)(F) further clarifies that the Volcker rule prohibitions should not disrupt insurance companies' ability to make prudent investments with funds from their general accounts, including investments in hedge or private equity funds. The final rules should therefore permit regulated insurance companies to make appropriate general fund investments both as principal and in hedge or private equity funds. This would not only appropriately reflect the statute's exemption of insurance company general accounts from both Volcker Rule prohibitions, but would also reflect the careful accommodation of the business of insurance.

Finally, we would like to comment about the statute's requirement that the Volcker Rule becomes effective on July 21, 2012, regardless of whether final rules are in place. Given the statutory mandate to accommodate the business of insurance, the insurance industry should not face the prospect of radically modifying its investment practices based solely on proposed rules that, in light of the complexity of the Volcker Rule and the thousands of comments received by the agencies, will likely not become the final regulation as currently drafted. In the absence of further written guidance, insurance companies should not be compelled to take this step to avoid being penalized for noncompliance.

Section 13(c)(2) of the statute provides all entities subject to the rules with two years to bring their activities and investments into compliance with the rules. If guidance in the form of final rules is not available on critical issues well before the effective date, the agencies should provide alternative workable means to comply with the Volker Rule during this transition period, and prior to the issuance of the final rules. We ask the agencies to consider issuing joint guidance in an appropriate form that clarifies that, pending the effective date of final rules, they will not take any action to force divestiture under the Volcker Rule for any conduct taken by insurance companies under applicable State insurance law during the period between the effective date of the statute and the effective date of final rules. Moreover, such joint guidance should clarify that during this period, insurance companies will not be prohibited from investments otherwise permitted by State insurance company investment law.

Thank you for considering our views on this important matter.

Sincerely,

Sherrod Brown
United States Senator

Tom Harkin
United States Senator