SPENCER BACHUS, AL, CHAIRMAN

BARNEY FRANK, MA, RANKING MEMBER

United States House of Representatives
Committee on
Financial Services
Washington, D.C. 20515

May 30, 2012

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

The Honorable Ben S. 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

Mr. John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

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

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

We are writing to express our concerns about certain unintended consequences of the proposed rules your agencies have issued to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule." The Volcker Rule proposal aims to prohibit banks from engaging in proprietary trading and from sponsoring or investing in hedge funds, private equity funds, or such "similar funds" as your agencies may determine by rule.

However, as written, the proposed rules have the potential to subject mutual funds and other registered investment companies (collectively referred to as "registered funds") to the Volcker Rule's restrictions. Over 90 million shareholders use registered funds to help them save for retirement, for their children's education, and to meet other important investment goals. Congress did not intend for the Volcker Rule to interfere with the creation or operations of these highly regulated funds. Yet, without further clarification, the proposed rules could do just that. This would be a disservice to the investing public with no countervailing benefits.

The proposed rules would extend the restrictions on sponsoring or investing in hedge funds, private equity funds, or "similar funds" to all "covered funds." That term is defined so broadly that it could sweep in a range of investment vehicles—even index mutual funds—that bear no resemblance to hedge funds or private equity funds. As a result, banks and their affiliates and subsidiaries could face restrictions on sponsoring or investing in certain *registered* funds, despite the fact that Congress clearly

meant to target activities involving *unregistered* funds. We urge you to avoid this inappropriate result by excluding registered funds from the definition of "covered fund."

For similar reasons, we also respectfully request that you exclude registered funds from the definition of "banking entity." Otherwise, the proposed rules leave open the possibility that a registered fund could be deemed to be a banking entity in some circumstances, such as when a bank-affiliated sponsor launches a new fund and supplies the seed capital to get the fund up and running. If so, the fund itself would be prohibited from engaging in certain investment activities, which would not make sense. We believe this may be an inadvertent technical issue that the agencies can easily remedy without running afoul of Congress' intent.

Finally, consistent with Congressional intent to limit the extraterritorial impact of the Volcker Rule, non-U.S. retail funds—which are not managed or structured like hedge funds or private equity funds—also should be excluded from the definitions of "covered fund" and "banking entity."

It is important that all new rulemakings by the regulatory agencies are thoroughly reviewed prior to implementation to avoid unintended, negative spillover effects. The changes we recommend above are in keeping with this important balance.

Sincerely,

Scott Garrett
Member of Congress

Shelley Moore Capito
Member of Congress

Gwen Moore
Member of Congress

Gary C. Peters
Member of Congress