Stuyvesant Trading Group, LLC
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February 13, 2012

Via U.S. Mail and Electronic Submission

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NW
Washington, D.C. 20549-1090

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NS
Washington, D.C. 20429

Office of Comptroller of Currency
250 E Street, SW
Mail Stop 2-3
Washington, D.C. 20219

Re: Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (Docket No. R-1432 and RIN 7100 AD 82 (Board of Governors); Docket ID OCC-2011-014 (OCC); RIN3064-AD 85 (FDIC); and File No. S7-41-11 (SEC))

Dear Sir or Madam:

As the head of a small proprietary trading firm, the former highest ranking elected official of the American Stock Exchange and having served on a NYSE board of directors, I am in a unique position to comment on the destructive forces brought to bear on the financial marketplace due to the duplicitous nature of large financial firms' clear violation of their fiduciary responsibilities to their clients with their overarching desire to profit at those same clients' expense. I have seen firsthand how exchanges bow to the pressures of large institutions when they craft policy in order to secure the favor of these large institutions that themselves are negotiating not on behalf of their clients but for their own interests, sometimes at the expense of their own clients.

In simplest terms, a broker or large financial institution that is acting on the behalf of a client, whether it is a large pension fund or a small investor, should act only for the best interests of that client. This is simply not possible when the large financial institution profits from taking the other side of the transaction. In any other industry, it would be preposterous to think that a client's representative can make a profit from securing a worse price for its client, but it is common practice in the financial industry. This is why it is imperative for this Commission to buck the political forces attempting to modify and dilute the protections that this rule aims to protect, and to pass the rule with as few exceptions as possible.

An example of just how ludicrous it is that a firm representing a client has the right to profit from that client's business from a third party—whether it be in a market making capacity, advisory capacity or in any other capacity—is when you compare this practice within the financial community to that of other industries where it is clearly against applicable law and regulation, if not against the basic principles of business. If an individual hires a lawyer to negotiate the sale of his business, he expects the lawyer he hires to represent his best interests. There is no question that said lawyer would not be allowed to negotiate the price in a deal in which the lawyer gains ownership of the business or gets a commission from the ultimate buyer in any fashion. If a patient consults a doctor on how to proceed with treatment for cancer and is seeking advice on whether to follow a traditional course of surgery or to attempt to undergo an experimental drug treatment, it would be unconscionable for that doctor to steer this patient towards using the new drug if the doctor would profit from selling it. These conflicts of interests are well-recognized and proactively guarded against within the respective industries. Sometimes as an industry we need to step back from the minutia and look at the big picture. If a financial services firm is representing a client, the firm should represent only the client's interests, and should never be in a position to benefit from that client getting a worse deal, in any way.

Our financial system originally established two definitions for trading firms - Broker and Dealer - which are diametrically opposed. I believe it is time to reinforce the distinctions between these two categories. A firm should not be a Broker/Dealer. <u>A firm should be a Broker or a Dealer.</u> A firm should be in the business of trading for its own account or, alternatively, of helping clients execute trades by securing them the best prices. A firm should be in the business of buying companies or in the business of advising companies, not both. A firm should never be in a position that allows them to profit from a client's loss. Unfortunately, this is how the system is set up at present.

Below is a list of anticompetitive behaviors and practices that by in large occur because of the ability of large financial institutions to trade against their own clients.

1. Large equity options order-flow handling firms sell their order flow to the highest bidder for the benefit of the firm without having to pass any of those proceeds on to their clients. Even if those proceeds trickle down to the client in the form of lower commission costs the firm is dis-incentivized from seeking the best prices for its clients and has increased incentive to maximize payments for its order flow regardless of quality of execution. Furthermore after collecting the payment for order flow fees the firm still direct those marketable orders most mispriced to their own proprietary market bids and offers when they deem it most profitable.

2. Exchanges increasingly set policy to benefit the large firms' ability to internalize their order flow for the sole purpose of enabling those firms to profit from interacting with their own client base. Examples of this policy can be seen in guaranteeing large firms higher and higher participation rates, thus forcing smaller players out of the business and creating an anti-competitive environment which will ultimately result in less competition and wider spreads.

3. At the highest level of management at the NYSE, for certain, and at other exchanges, most probably, there is an intense and palpable pressure, in my opinion, to not encroach on the OTC "over the counter" business or any other highly lucrative business that large financial institutions dominate.[1] There is a fear that these large firms will retaliate against the exchanges by decreasing the amount of order flow they send if provoked. This is solely for the reason that large financial institutions profit so greatly from trading in the opaque and unregulated OTC market where they are able to trade against their own clients, such that they effectively block the exchanges from having any hope of breaking into those markets to create fair, open and competitive trading platforms. The professed rationale that fair, open and competitive markets cannot be established due to lack of liquidity is absolutely and unequivocally a myth perpetrated by the largest financial firms, and will always be proven wrong when professional, independent market participants are given fair access to making markets.

I appreciate the ability to comment on such a historical piece of legislation and can only hope that the Commission, Congress, and all those with the power to regulate our markets and economy are able to withstand the overwhelming pressure by the entitled members of the financial community, and proceed to pass this rule with zero exceptions for market-making or any other business activity. To reiterate, no large financial institution should have the right to profit from its client's losses, but rather, it should have a strict fiduciary and legal responsibility to represent the client's best interests as opposed to its own.

Thank you,

Michael S. Whitman
Principal and Founder
Stuyvesant Trading Group, LLC

[1] On a personal note, it was my disappointment in not being able to list the very instruments (credit default swaps) that got this country in so much trouble due to the proliferation of bank-to-bank credit risk that led me to resign from my board membership with the exchange in 2011.