BB&T

BB&T Corporation

200 West Second Street
P.O. Box 1250
Winston-Salem, NC 27102

Clarke R. Starnes
Senior Executive Vice President
Chief Risk Officer

September 21, 2018

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW,
Washington, DC 20429

Re: Docket No. R-1608 and RIN 3064-AE 67

Dear Mr. Feldman:

BB&T Corporation ("BB&T") appreciates the invitation from federal regulatory agencies ("Agencies") to comment on the *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*. BB&T is one of the largest financial services holding companies in the U.S. with $222.7 billion in assets and market capitalization of $39.1 billion, as of June 30, 2018. Based in Winston-Salem, N.C., the company operates more than 1,900 financial centers in 15 states and Washington, D.C. and offers a full range of consumer and commercial banking, securities brokerage, asset management, mortgage and insurance products and services.

BB&T is involved in various trading-related activities associated with managing the risk inherent in our businesses and by acting as a financial intermediary to provide our clients access to derivatives, foreign exchange and securities markets. As a large financial holding company, BB&T implemented an enhanced compliance program as required by the 2013 Volcker Rule final rule (the "Final Rule"). While BB&T's trading-related activities conform to various exclusions or exemptions of the Final Rule, the enhanced compliance program requirements overshadow the residual risk of non-conformance. As such, BB&T is very supportive of the Agencies' revised risk-based approach to simplify and tailor the Final Rule.

In response to the Agencies' request for comment in connection with the proposed revisions, the following remarks are offered with reference to the questions being asked:

- **<u>Permissible seeding periods for Registered Investment Companies, Foreign Public Funds, and Securities and Exchange Commission-regulated business development companies</u>.** BB&T believes there is uncertainty about the length of permissible seeding periods by way of the statute's reference – by example – to the covered fund extension timelines. As indicated by one of BB&T's Asset Management divisions, industry participants seek to develop product marketing materials that exhibit performance track records longer than three years. To meet client product demand, BB&T proposes allowing banking entities to provide seed capital for up to five years to develop a performance track record. Subject to a written business plan and compliance monitoring, including an

appropriate wind-down period to withdraw seed funding, a longer seeding period would allow non-banking entities to better compete with non-banking asset managers with regard to new product development. [Question 14]

Investment vehicles or entities that are treated as banking entities and for which commenters believe relief, consistent with the statute, would be appropriate. Under the direction of BB&T's primary insured depository institution regulator, BB&T understands the Section 3(d)(8) exclusion of the Volcker Rule is intended solely for qualified compensation plans. Many employers, including BB&T, maintain non-qualified compensation plans that are available to certain associates to provide additional long-term savings, retirement benefits, and incentives to achieve business objectives. While there is not a legal requirement to fund non-qualified plans, BB&T typically funds non-qualified plans in support of our associate value proposition. As a legal consequence of plan design, BB&T maintains a reversionary interest in plan assets as they must remain subject to the claims of general creditors in the unlikely event of insolvency. According to the feedback BB&T has received, this reversionary interest, albeit contingent, causes the non-qualified plans to not meet the 3(d)(8) exclusion. BB&T believes banking entities that prudently manage non-qualified plan assets on a basis substantially similar to that of qualified plan assets should be able to claim the 3(d)(8) exclusion. Agencies should clarify the treatment of and explicitly exclude all prudently-managed employee compensation plans from the Volcker Rule.

Conversely, similar to the accounting acknowledgement under Section 13(a)(iii), modifying the absolute P&L test of the proposed accounting prong to allow for the inclusion of a non-qualified plan's contingent liabilities, thereby allowing a presumption of compliance, would provide a similar compliance outcome. [Question 22]

- **For purposes of determining whether certain trading activity is within the definition of proprietary trading, is the proposed accounting prong over- or under-inclusive.** BB&T understands the intent of the proposed accounting prong to require a review of all fair value financial instruments, both on- and off-balance sheet. However, as mentioned in the response to Question 22, the absolute P&L test needs to be flexible enough to consider offsetting accounting liabilities, where applicable. The presumption of compliance with Agency reservation of authority should allow for such flexibility. Conversely, should Agencies not want to modify the accounting prong, clarification should be explicitly provided to address the prong's over-inclusiveness and direct banking entities towards exclusions or exemptions where the underlying financial instrument activity is clearly not proprietary trading (e.g. exclude available-for-sale securities with a corresponding documented liquidity management plan, matched client interest rate derivatives, small business investment companies, prudently managed non-qualified compensation plans, long-term strategic equity investments). [Question 33]

- **Other objective measures related to the definition of a proprietary trading account.** BB&T believes proprietary trading look-through requirements for bank-owned life insurance and public welfare funds where a banking entity maintains ownership interest in excess of 25%, thereby becoming an "affiliate" or "subsidiary" of the banking entity, should

not be required since any cash-equivalent residual investing in such funds is incidental to the fund manager's fiduciary responsibility and is clearly not proprietary trading. A non-controlling ownership interest may further exacerbate this potential conflict between Bank Holding Company Act permissible investment activity and the Final Rule. [Question 39]

- **Alignment of the proposed error account exclusion with existing policy and procedures.** BB&T supports the proposed exclusion for trading-related error accounts. While BB&T seeks to avoid error activity, trading policies and procedures include internal controls for monitoring error accounts. Consistent with operational risk management practices, bona fide error activity is separately managed and classified as an operational loss when there is a loss event or a "near miss" when error activity results in a gain. Such an account is clearly not a proprietary trading account. [Question 52]

- **Appropriateness of the Agencies' reservation of authority to determine whether a particular activity is proprietary trading.** BB&T supports the reservation of authority codicil introduced by the proposal and the corresponding benefit of a tailored application of the Final Rule. However, coordination and consistent application within banking entities and across the industry is very important, especially in instances where the primary financial regulatory agency may vary by legal entity within a financial holding company. Designation of a lead agency, common supervisory procedures and a formal agreement between agencies would strengthen supervision. [Question 60]

- **Clarity of the proposed presumption of compliance for underwriting activity within internally set risk limits.** BB&T supports the presumption of compliance for underwriting activity within internally set risk limits. However, compared to daily market-making client facilitation, underwriting activity may, at certain times, be sporadic as a result of moderate client demand, market factors, or both. In such instances, low limit utilization may result in rebuttal of the presumption of compliance even when the underwriting position itself is easily identifiable as a primary or secondary market new issue. In addition to the presumption of compliance by reference to risk limits, including appropriate hold periods, Agencies should consider corporate actions (e.g. debt offering) as an appropriate identifier of permissible underwriting activity. [Question 64]

- **Relying on internally set limits to comply with the statutory Reasonably Expected Near Term Demand requirement.** Risk management limit structures generally include both activity-based and risk-based limits. Examples of activity-based limits include financial instrument hold periods, notional size and inventory turnover. BB&T believes activity-based limits are reflective of client demand and are an appropriate statutory substitute compared to risk-based limits, which typically can be hedged, resulting in a net risk profile that may be significantly smaller than the gross position of the trading desk. [Questions 67, 86]

- **Agency notification when a trading limit is exceeded or increased for permissible underwriting and market-making activities.** Regarding the presumption of compliance and Agency notification of a limit increase, either on a temporary or permanent basis, instead of an affirmative notice requirement, banking entities should instead maintain a

detailed record of each limit change and provide such records to Agencies upon request or during an examination. At a minimum, Agencies should clarify such notifications are to occur on an ex-post basis and an affirmative Agency response is not required. [Questions 74, 93]

Appropriate treatment of loan-related swaps as permissible under the market making exemption. BB&T believes it is appropriate to treat loan-related swaps as permissible under the market-making exemption as such swaps are an accommodation to our customers' borrowing needs. With regard to hedging strategy, contemporaneous purchase or sale of an offsetting derivative in connection with a loan-related derivative may not always be one-to-one due to various operational approaches, resulting in a de minimis residual market risk profile. Furthermore, in times of market stress, market or counterparty credit dislocations may necessitate a prudent adjustment to a hedge strategy. Accordingly, a targeted exclusion or exemption with corresponding operational flexibility, such as the market making exemption, is warranted for derivatives portfolios that are largely contemporaneously offset recognizing such a hedge strategy is highly aligned with the intent of the Final Rule. [Question 101]

- **Safety and soundness impact from proposed reductions in the compliance requirements for risk-mitigating hedging activities for banking entities that do not have significant trading assets and liabilities.** BB&T believes the proposed compliance reductions would not increase risk to the safety and soundness of BB&T or U.S. financial stability. As a large financial holding company, BB&T is subject to on-going monitoring requirements, both internally and externally, with regard to risk-mitigating hedging activities. On-going monitoring and independent risk management oversight provides appropriate clarity and assurance with regard to risk-mitigating hedging activities that are germane to banking. BB&T's stated risk values and risk appetite support the safety and soundness of our financial institution. [Question 119]

- **Proposed exclusion of family wealth management vehicles from the definition of "covered fund."** BB&T believes family wealth vehicles should be excluded from the definition of "covered fund." While recognizing such vehicles may utilize identical structures and pursue comparable investment strategies as contemplated by the covered fund definition of the statute, the asset management business context in which such structures are typically used is readily identifiable and distinguishable from that of proprietary trading. The consideration of a characteristics-based definition with regard to a definitional exclusion for family wealth vehicles is prudent as a business unit's client management strategy should be readily transparent to support this basis with supporting policy or other documentation that can be provided to Agencies upon request or during an examination. [Question 156]

- **Small business investment company ("SBIC") issuer exclusion from the definition of "covered fund."** BB&T believes Agencies should modify the SBIC exclusion to explicitly provide the exclusion will remain available when a SBIC relinquishes or voluntarily surrenders its license. It is a normal course of business for a SBIC fund manager to relinquish or voluntarily surrender a license as the fund is winding down and is focused on returning capital to partners as it sells assets as part of its dissolution. In other words, the

SBIC license is no longer required nor is it a prudent use of partnership funds. In such instances, Agencies should consider the prior existence of a license and the operating history of the fund in terms of satisfying the exclusion criteria. A similar consideration should be applied to all funds seeking the public welfare fund exclusion, including Community Reinvestment Act ("CRA") funds. [Question 181]

- **Application of the six-pillar compliance program requirements only to banking entities with significant trading assets and liabilities.** BB&T supports applying the six-pillar compliance requirement only to banking entities with significant trading assets and liabilities. As a large financial holding company, BB&T was required by the final rule to implement an enhanced compliance program. However, to date, BB&T's current business activities have not required escalation or resulted in material false positive or actual rule violations. The proposed risk-based tailoring approach being considered will allow for streamlined oversight, training and recordkeeping, which will provide a more efficient and less costly approach to compliance. [Question 203]

- **Appropriateness of the scope of the CEO attestation requirement.** The scope of the CEO attestation requirement should be limited to significant activity banking entities. BB&T believes utilizing a secondary threshold for banking entities with a large amount of consolidated assets is inconsistent with the overall proposed risk-based tailoring approach. By means of example, BB&T's market-risk weighted assets as of June 30, 2018 were less than 1% of total risk-weighted assets, suggesting a CEO attestation is not warranted.[1] Furthermore, the CEO attestation requirement may require a moderate activity banking entity to maintain a larger degree of compliance monitoring compared to the requirements of a simplified compliance program, which would not be consistent with the intent of the proposed revisions. [Question 206]

BB&T believes the comments offered are consistent with the intent of the original statute and provide additional clarity without introducing considerable room for misinterpretation or evasion, which would ultimately be subject to the proposed reservation of authority. BB&T appreciates the Agencies' review of comments with respect to the proposed revisions and supports the intent and the direction of the reform efforts.

Sincerely,

Clarke R. Starnes III
Senior Executive Vice President and Chief Risk Officer
BB&T Corporation

[1] BB&T Consolidated Financial Statements for Holding Companies—FR Y-9C; Schedule HC-R; 6/30/2018