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Via electronic submission – www.regulations.gov

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC-2018-0010

Ann E. Misback, Secretary
Board of Governors
Federal Reserve System
20th Street & Constitution Ave. NW
Washington, DC 20551
Docket No. R-1576
RIN 7100-AF 06

Robert E. Feldman, Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064-AE67

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
File Number S7-14-18

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581
RIN 3038-AE72

Re: Request for comment on proposed revisions to the Volcker Rule

Our associations, Commercial Real Estate Finance Council, Mortgage Bankers Association, and The Real Estate Roundtable (together referred to as the "Associations") appreciate this opportunity to comment on the Agencies' proposed amendments (Proposal) to the "Volcker Rule."[1] We applaud the Agencies' efforts to streamline the current rule – widely viewed as overly prescriptive and extending beyond statutory intent – and to alleviate unnecessary costs and burdens on businesses.

By way of background, our members represent U.S. commercial and multifamily real estate investors, lenders, and service providers – a market valued at an estimated $13.75 trillion supported by $4.05 trillion of commercial real estate (CRE) debt. Commercial banking organizations and the commercial mortgage backed securities (CMBS) market are two of the top sources of private debt for commercial and multifamily real estate.

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[1] Office of the Comptroller of the Currency (OCC), Federal Reserve System (Fed), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC), Notice of Proposed Rulemaking, *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships with, Hedge Funds and Private Equity Funds*, 83 Fed. Reg. 33432 (July 17, 2018) (hereinafter "Proposed Rule" or "Proposal").

In general, the Associations welcome the Agencies' efforts to simplify the current Volcker Rule regime and better align it with original statutory purposes, including, *inter alia*:

- Promoting and enhancing the safety and soundness of banking entities;

- Protecting taxpayers, consumers, and overall U.S. financial stability from banks that engage in unsafe and unsound activities; and

- Limiting activities that in the past have caused undue risk or loss in banking entities.[2]

In our members' experience, the Volcker Rule – in its current form – has not proven to be an efficient tool for achieving its intended policy objectives for a number of reasons, including:

- Unclear definitions inadvertently ensnare permissible activities that are essential to the health and welfare of the U.S. financial system (e.g., market-making, hedging, and asset/liability management (ALM)); and

- A lack of harmonization exists between the Volcker Rule and the extensive risk governance and analytic systems required by the Basel framework and the Dodd-Frank Act's enhanced prudential standards,[3] which are already institutionalized at large banks.

The Agencies' Proposal includes several features that appear to potentially alleviate restrictions on market making and hedging, both of which are essential components of the CRE market we represent. For example, the Proposal would remove Appendix B to the 2013 Original Rule,[4] which would essentially permit a banking entity with significant trading assets and liabilities to integrate compliance programs and meet these requirements with existing compliance regimes. It also would remove the correlation analysis and "demonstrable reduction in specific risks" requirements for permissible hedging activities and repeal the requirement for enhanced documentation for all covered entities.

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[2] *See* 12 U.S.C. § 1851 (instructing the Financial Stability Oversight Council to make recommendations on implementing the Volcker Rule to achieve these and other purposes).

[3] Dodd-Frank's enhanced prudential standards require the largest banks to follow rules for heightened oversight, measuring, and monitoring, including stress tests, Comprehensive Capital Review and Analysis, living wills, risk assessments, and more.

[4] Fed, FDIC, OCC, and SEC, Final Rule, Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5,536 (Jan. 31, 2014); CFTC, Final Rule, Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5808 (Jan. 31, 2014) (collectively, the "2013 Original Rule").

However, other aspects of the Proposal, in particular the proposed accounting test within the "trading account" definition, would make compliance with the Volcker Rule even more challenging and less efficient than it is today. In addition to a general recommendation that the Agencies work to minimize unintended negative consequences stemming from the current Volcker Rule, the Associations are focusing on the following areas of agreement, which we believe will be the most impactful for our members:

- We oppose the proposed accounting-based prong of the definition of "trading account;" and

- While we support (for purposes of permissible underwriting and market-making activities) generally the proposed presumption of reasonably expected near term demands (RENTD) of clients, customers, or counterparties based on internal risk limits, we recommend that communications regarding breaches of risk limits be integrated into existing supervisory processes rather than creating a new and separate reporting burden.

The CMBS market in particular continues to be an important source of funding for the real economy. The CMBS market saw nearly zero issuance in 2009 but slowly rebuilt with issuance rebounding, albeit unevenly, over the last several years. Today, the CMBS market continues to be a sound source of debt for secondary and tertiary market real estate owners and operators.

However, as expressed by the Associations in previous letters to U.S. Agencies, CMBS is facing severe regulatory impediments, many of them contributing to a secular erosion of secondary market liquidity and a reduction in post-crisis issuance volume. The Volcker Rule itself has played a material role in how banks allocate their resources and has correspondingly contributed to this liquidity decline. To combat the unintended negative impact of the Volcker Rule on permitted activities like market making and to reduce overall compliance burdens and uncertainties that are dampening liquidity, we encourage the Agencies to adopt the enclosed recommendations.

In closing, the Associations support the Agencies' efforts to meaningfully revise the Volcker Rule. We agree with the general intention to provide more flexibility in managing investment banking, trading and balance sheet management activities. Less prescriptive approaches will benefit the industry, helping it to better meet the needs of banks' clients and shareholders, and the Agencies themselves by achieving better alignment with the principles of risk management and safety and soundness.

Sincerely,

Commercial Real Estate Finance Council
Mortgage Bankers Association
The Real Estate Roundtable