MARKETPLACE LENDING ASSOCIATION

RE: 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

TO: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Securities and Exchange Commission (SEC); and Commodity Futures Trading Commission (CFTC) (collectively, the ''Agencies'').

The MLA respectfully requests that in considering changes to the so-called "Volcker Rule" rule, Agencies examine how interpretations under the Bank Holding Company Act, the Dodd Frank Act, and the Change in Bank Control Act, all related to ownership / control, limit the potential for de novo Industrial bank applications from innovative lending firms without any meaningful improvements to the safety and soundness of the banking or the financial system. This is a timely request as recent Congressional testimony from Federal Reserve Board Vice Chairman for Supervision Randal Quarles and FDIC Chair Jelena McWilliams have indicated a desire to return to a normal process for considering Industrial bank applications.

The purpose of the Volcker Rule was to limit an insured depository institution (IDI) and its affiliates from engaging in short-term risk-taking by restricting / regulating 1) proprietary short-term trading for its own account and 2) investments in external or internal hedge funds / private equity funds that could be a source of illiquid, high-risk exposure for the IDI. The rule was never intended to dissuade a venture-capital-backed lending company from seeking out the regulatory clarity and direct supervision framework afforded to all chartered banking entities, including Industrial banks. The current implementation of the Volcker rule, however, unintentionally implements the statute in such a way as to produce this outcome. This risks limiting innovation within the banking system. Due to the wide scope of the Rule's definition of a "banking entity," as any person that directly or indirectly controls a depositiory instituition, the current version of the Volcker Rule would likely prevent potential de novo Industrial bank charter applications from innovative lending companies that have received significant funding from third party venture capital / private equity funds.

Significant investment rounds from such sources is necessary today to build the technology and capabilities required for a "challenger" bank with national reach to emerge in the United States. The Volcker Rule restrictions, however, related to bank investments in covered funds currently make it unworkable / untenable for a venture capital or private equity investor in an entity seeking the Industrial bank charter to be treated asa banking entity for purposes of the Volcker Rule. Being treated as such would mean that the fund and fund manager's activities would be subject to a host of new regulations and restrictions that would necessitate a fundamental change to their core activities.

The economic growth legislation signed into law earlier this year exempted depository institutions with under $10 billion in assets from the Volcker Rule, but that exemption goes away if such depository institution is controlled directly or indirectly by an entity with over $10 Billion in assets. It is relevant that legislation now pending on Capitol Hill sponsored by Mia Love (R-UT) would extend the exemption from the *Volcker Rule* to *all* banks under $10 billion, except in cases where the controlling parent entity or controlling shareholder with over $10 Billion in assets is *itself a bank holding company*.

Opportunity for flexibility under current law regarding the interpretation of "control"
The Federal Reserve has in the past suggested that a firm could, under appropriate circumstances, own or control up to 33.3% of the total equity (voting and nonvoting securities) of a company without being deemed to control the company, provided that (i) not more than 14.9% of that total consists of voting securities and (ii) it is satisfied that the investor does not have a "controlling influence" over the management or policies of the investee company, as a result of passivity commitments, limited (i.e., not disproportional) board representation, limited business relationships, and other factors.

The MLA respectfully submits a request that as it reviews the Volcker Rule and other regulations, the Agencies review their discretion to consider an investor in an entity seeking out an Industrial bank charter to be non-controlling (and therefore not a banking entity for purposes of the Volcker Rule) in a situation where the investor directly or indirectly owns up to 49.9% of the total equity of the depository institution (voting and nonvoting securities), provided that (i) not more than 24.9% of that total consists of voting securities and (ii) it is satisfied that the investor does not have a controlling influence over the management or policies of the depository institution, as a result of appropriate and reasonable passivity commitments, limited (i.e., not disproportional) board representation, reasonably limited business relationships and other factors.

The MLA is aware that the Federal Reserve has no discretion (without a legislative change to the statute) to treat an investment in 25% or more of any class of voting securities as non-controlling, even with passivity commitments.

Other Considerations
The MLA also requests that the federal banking regulators confirm that it would generally permit the non-voting securities in an entity to automatically convert into voting securities upon transfer to a third party, provided that the transfers are made as part of a widely dispersed public offering of securities or in private placements of not more than 2% of the entity's voting securities to any single third party or group of third parties acting in concert.

Thank you for reviewing these matters.

Sincerely,

Members of the Marketplace Lending Association