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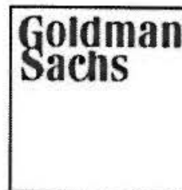


March 31, 2020

*Via Electronic Submission*

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket No. OCC-2020-0002; RIN 1557-AE67

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1694; RIN 7100-AF70

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064-AF17

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
File Number S7-02-20; RIN 3235-AM70

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581
RIN 3038-AE93

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

The Goldman Sachs Group, Inc. ("we" or "the firm") appreciates the opportunity to comment on the notice of proposed rulemaking (the "NPR") issued by the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation (the "FDIC"), the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC" and, together with the OCC, the Federal Reserve, the FDIC and the SEC, the "Agencies") to amend the currently effective regulations implementing the "Volcker Rule" (the "Current Rule," and such regulations as amended in the manner proposed in the NPR, the "Proposed Rule").[1]

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[1] 85 Fed. Reg. 12120 (February 28, 2020). Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act codified the Volcker Rule as Section 13 of the Bank Holding Company Act of 1956, as amended (the "BHC Act").

**INTRODUCTION**

We believe that the NPR represents a positive and important step toward achieving the Agencies' stated objectives of improving and streamlining their implementation of the Volcker Rule and providing much-needed clarity regarding certain aspects of the Current Rule's covered funds provisions.[2] A number of the proposals contained in the NPR have the potential to address concerns that we and other commenters have raised in letters responding to the Agencies' requests for comment in prior rulemakings.[3] We believe these changes are particularly timely and needed given the current market dislocations. These proposals would enable banking entities to offer financial services to clients and engage in other permissible activities in a safe and sound manner that promotes risk sharing consistent with, and subject to appropriate limitations that serve the objectives of, the Volcker Rule.[4] We strongly support the Agencies' proposals to exclude certain credit funds from the "covered fund" definition and to modify the loan securitization exclusion.

In **Part I** of this letter, we describe several recommendations regarding the ability of credit funds and loan securitizations to invest in non-loan and non-debt assets. We believe that the objectives of the Proposed Rule would also be furthered by an additional exclusion from the "covered fund" definition for long-term investment vehicles. This exclusion should be available to long-term investment funds as well as other vehicles that are inadvertently captured by the "covered fund" definition, but only so long as they do not engage in impermissible proprietary trading and, rather, engage in long-term investments which the banking entity could make directly (among other conditions and limitations described further in **Part II** of this letter). Excluding these types of issuers would be an important step toward alleviating the adverse effects that the overbroad definition of "covered fund" has had on banking entities' ability to contribute to capital formation, funding of innovation and job creation and other activities critical to the health and recovery of the U.S. economy, all without meaningfully increasing risk to banking entities or financial stability.[5]

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2 85 Fed. Reg. at 12123.

3 In particular, please refer to comments in response to the Agencies' July 2018 notice of proposed rulemaking with respect to the Volcker Rule (83 Fed. Reg. 33432) (the "2018 NPR") submitted by the Bank Policy Institute (letter dated Oct. 17, 2018), at 31-50; Financial Services Forum (letter dated Oct. 17, 2018), at 22-37; and Securities Industry and Financial Markets Association (letter dated Oct. 17, 2018), at Annex B.

4 85 Fed. Reg. at 12123.

5 We also strongly support the Agencies' proposals to exclude qualifying venture capital funds, client facilitation vehicles and family wealth management vehicles from the definition of "covered fund." In addition to promoting safety and soundness, reducing unnecessary regulatory burden and streamlining compliance, we believe that the exclusions proposed will help foster more efficient capital deployment and enable us to better serve our clients and the broader economy. With respect to the exclusion for qualifying venture capital funds in particular, the proposal would enhance banking entities' ability to contribute to innovation and economic growth in a manner that directly supports safety and soundness. We agree with the Agencies that the proposed exclusion's benefits include, among others, enabling banking entities to diversify their permissible investments and share the costs and risks of such investment activities with third-party investors. The proposed exclusion would also help to address geographic disparity in the availability of venture capital and other types of financing to U.S. companies, which as the Agencies note is generally less available outside of several large metropolitan areas on the coasts. 85 Fed. Reg. at 12137.

For similar reasons, we strongly support the Agencies' proposal to make clear that the Volcker Rule does not require direct investments made alongside covered funds that are otherwise permissible for a banking entity to be treated as though they were made in the fund, subject to certain conditions.

For further discussion of our support of these proposals and of certain recommendations included in other comment letters on the NPR submitted by certain trade groups, which we have participated in preparing and endorse, please refer to **Part III** below.

## I. CREDIT FUNDS AND LOAN SECURITIZATIONS

### A. Credit Fund Exclusion

We are strongly supportive of the Agencies' proposal to exclude certain credit funds from the "covered fund" definition. The proposal would help to address the adverse effects that the covered fund restrictions have had on the availability of capital and credit in the United States and facilitate banking entities' lending activities that promote broader economic growth. We agree with the Agencies' view that the proposed credit fund exclusion would address the application of the covered fund provisions to credit-related activities in which banking entities are permitted to engage directly, and would be consistent with and effectuate Congress's intent that the Volcker Rule not limit or restrict banking entities' ability to sell loans.[6] We believe also that the exclusion would be consistent with the promotion and protection of the safety and soundness of the banking entity and the financial stability of the United States, especially in light of the limitations and conditions on the proposed exclusion.[7] Properly conducted credit funds, particularly during periods of market distress, help secure the supply of credit and reduce the concentration of risk for both individual banking entities and the banking system as a whole.[8]

It is appropriate that credit funds be permitted to hold non-loan debt securities and a limited amount of non-debt assets, as the Proposed Rule contemplates.[9] Providing flexibility to acquire such assets is, in our view, necessary to ensure that this exclusion is available as a practical matter. With respect to the Agencies' request for comments on whether credit funds should be subject to a quantitative limit on permissible non-loan and non-debt assets,[10] we do not believe that any such limit should apply to equity interests that the fund acquires in connection with loans or debt instruments—for example, warrants or other equity-like interests received on customary terms in connection with the credit fund's lending activities. Imposing a quantitative limit of this type would

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6 85 Fed. Reg. 12132.

7 As we noted in our comment letter to the 2018 NPR, unregulated private equity funds have become major competitors for traditional bank lending because, among other reasons, they are able to establish funds that diversify risk and that have access to a deep capital pool from long-term investors in a way that most banks cannot through direct lending. *How the Biggest Private Equity Firms Became the New Banks,* Financial Times, Sept. 19, 2018.

8 For example, when global leveraged lending and high yield issuance declined by 71% in 2008, credit funds sponsored by the firm increased their lending by 49%. This funding provided alternative sources of credit when traditional securitizations were not available and traditional balance sheet lending was dislocated, and it allowed U.S. businesses to tap into meaningful financing from institutional investors.

9 Proposed Rule § _.10(c)(15)(i)(C)(*1*)(*iii*).

10 85 Fed. Reg. at 12133, *Question* 29.

arbitrarily disadvantage certain borrowers that seek to customize their capital structure and reduce their funding costs through the issuance of such equity instruments. It would also create challenges in monitoring and a risk of inadvertent non-compliance due to fluctuations in asset value that are beyond the control of the issuer or the banking entity.

As for whether a credit fund's permitted ownership of equity securities (or rights to acquire equity securities) raise concerns of evasion, which the Agencies have also queried,[11] we believe that it does not. The credit fund exclusion as proposed already addresses the evasion concerns mentioned in the NPR. In particular, the Proposed Rule requires that any equity instruments held by the credit fund must be received "*on customary terms in connection with*" the loans or debt instruments acquired by the fund.[12] This provision would effectively preclude an excluded credit fund from becoming a fund whose holdings consist of "predominantly equity securities (or rights to acquire equity securities)," in light of the typical structure of credit funds' lending transactions, the customary terms of such transactions and the way in which such a credit fund's investment strategy would likely be described to investors. As a matter of market practice, these lending transactions would include warrants and other equity securities of the borrower to only a limited degree, if at all—typically, a lender would receive only a small percentage of the total equity of the borrower in the form of warrants.[13]

Moreover, credit funds would remain subject to other provisions of the Volcker Rule, including the prohibition on proprietary trading, restrictions designed to mitigate any "bail-out" risk, and a requirement that a banking entity's investment in and relationship with the fund must comply with the so-called "prudential backstop" limitations under Section _.15 of the Current Rule.[14]

In addition to permitting a credit fund to hold equity securities (or rights to acquire an equity security) received on customary terms in connection with loans or debt instruments, the Agencies should also permit a credit fund to hold other non-qualifying assets, including preferred and other equity securities, in an amount that does not exceed 20 percent of the fund's total assets, calculated on the basis of a numerator equal to the lower of purchase price and par value of the non-qualifying assets and a denominator equal to the issuer's aggregate capital commitments plus its subscription-based credit facility.

This flexibility would allow credit fund borrowers to better manage their balance sheets by accepting both debt and limited equity investments from the fund while appropriately limiting the scope of the exemption for credit funds. This would also be consistent with other exclusions under the Investment Company Act, such as Section 3(c)(5)(C)[15] and Rule 3a-7, each of which also provides flexibility for issuers to invest in non-qualifying assets up to a specified maximum amount without losing the ability to rely on the exclusion, as well as provisions of the Investment Company Act that allow business development companies to invest up to 30 percent of their assets in non-qualifying investments. These exclusions appropriately recognize that it is important for issuers to have some limited flexibility to hold non-qualifying assets, without which the requirements would be

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[11] 85 Fed. Reg. at 12133, *Question* 29.

[12] Proposed Rule § _.10(c)(15)(i).

[13] 85 Fed. Reg. at 12133.

[14] Current Rule § _.15(a)(3).

[15] Under the SEC's historical guidance, Section 3(c)(5)(C) may be relied upon by issuers that hold up to 20 percent of their assets in non-real estate related assets.

too rigid and preclude appropriate issuers from qualifying for the exclusions. In the case of the proposed credit fund exclusion, failure to provide sufficient flexibility could discourage fund sponsors from launching and structuring credit funds in reliance on the new exclusion, potentially reducing the sources of credit financing for businesses at a time when promoting the availability of credit is critical to the health and recovery of the economy and is a central goal of recent legislative and regulatory efforts.[16]

Providing credit funds with a similar degree of latitude and applying the calculation methodology described above would promote certainty and clarity regarding the fund's compliance with the non-qualifying assets limitation. By contrast, a calculation methodology that fails to take account of the fund's entire portfolio, or that is based on factors which could fluctuate as a result of circumstances beyond the fund's or its sponsor's control or are otherwise dependent on market factors—for example, calculating the 20 percent limit based on fair market value or acquisition cost of the fund's assets—would create monitoring challenges and a risk of inadvertent compliance and could have the effect of discouraging otherwise permitted investments.

### B. Loan Securitization Exclusion

We are supportive of the Agencies' proposal to permit an issuer relying upon the loan securitization exclusion[17] to hold a limited amount of non-loan assets. In regard to the Agencies' request for comments on whether the loan securitization exclusion should permit issuers to hold a certain percentage and type of non-loan assets,[18] we believe that such assets should be permitted up to a cap of 10 percent (rather than the 5 percent cap under the Proposed Rule) of the issuer's total assets, calculated in the same manner as described in Part I.A above with respect to the 20 percent cap on a credit fund's permitted non-qualifying assets. Based on our experience, we believe that a 10 percent cap would be adequate to accommodate most loan securitizations, though there could be support for a cap in excess of 10 percent.[19]

As the Agencies note in the NPR, allowing loan securitizations to hold a small amount of non-loan assets in response to customer and market demand may increase a banking entity's capacity to provide financing and lending, as loan securitizations provide an important avenue for

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16 See, e.g., Federal Reserve, *Federal Reserve announces extensive new measures to support the economy* (Mar. 23, 2020), *available at* https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm (announcing the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility, which are intended to provide liquidity for, respectively, new bond and loan issuances and outstanding corporate bonds, and the Term Asset-Backed Securities Loan Facility, which is intended to provide credit to consumers and businesses by facilitating the issuance of asset-backed securities).

17 Current Rule § _.10(c)(8).

18 85 Fed. Reg. at 12129 *Questions 14* and *15.*

19 In contrast to most loan securitizations, credit funds are typically bespoke products which are driven by, among other things, negotiations with borrowers and investor preferences, and so we believe that the flexibility afforded by a 20 percent cap is more appropriate for credit funds. Moreover, credit funds are managed vehicles that deploy capital over a period of time, usually a number of years, whereas loan securitizations typically have a fixed pool of assets. As a result, credit funds require greater flexibility than loan securitizations to invest in non-qualifying assets, as market conditions and other factors may change during the credit fund's investment period and affect the types of assets that would be advisable and appropriate for the fund.

banking entities to fund lending programs.[20] Imposing a 10 percent cap on the "bucket" of permitted non-loan assets would continue to assuage potential concerns that allowing a limited degree of ownership of non-loan assets will lead to evasion, indirect proprietary trading and other impermissible activities or excessive risk to the banking entity. Permitting ownership of non-loan assets up to this cap would not, in our view, modify the fundamental characteristics and risk profile of a securitization, nor would it meaningfully increase risk to banking entities and the financial system. It would also be more consistent with Section 3(c)(5)(C) and Rule 3a-7 exclusions under the Investment Company Act, as discussed above.

The Agencies request comment on whether permitting loan securitization issuers to hold a certain percentage of non-loan assets would further the statutory rule of construction in section 13(g)(2) of the BHC Act.[21] This rule of construction instructs that the Volcker Rule shall not be construed to "limit or restrict the ability of a banking entity or nonbank financial company supervised by the [Federal Reserve] to sell or securitize loans in a manner otherwise permitted by law." In light of market demands, client expectations and industry practice, we believe that permitting excluded loan securitizations to hold, at a minimum, 10 percent of its assets in the form of non-loan assets would facilitate banking entities' ability to participate in extending credit and engage in otherwise permitted businesses involving the sale and securitization of loans.

## II. Long-Term Investment Vehicles and Inadvertent Covered Funds

The Agencies request comment on whether certain long-term investment funds that would not be qualifying venture capital funds should be excluded from the definition of "covered fund."[22] We strongly support the adoption of an exclusion from the definition of "covered fund" that would permit banking entities to invest in and sponsor long-term investment funds as well as other types of long-term vehicles which are inadvertently captured by the broad definition of "covered fund."

Excluding these types of entities will help to ensure that banking entities' otherwise permissible and properly conducted activities, such as providing crucial capital and investment to growing companies, start-ups, infrastructure assets or incubators, are not restricted solely on the basis of whether the banking entity conducts the activity directly or indirectly through a fund or other structure. As we noted in our comment letter to the 2018 NPR, we and others in the industry have historically used fund structures to share risk and provide these investments in order to fund vital growth opportunities, catalyze innovation, and facilitate the transformation of such businesses and promote broader economic growth.

We continue to believe that the Agencies should exclude from the definition of "covered fund" an issuer that meets each of the following conditions (a "Long-Term Investment Vehicle"):

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20 85 Fed. Reg. at 12129.

21 85 Fed. Reg. at 12129.

22 85 Fed. Reg. at 12138, *Question 50*. In particular, the Agencies request comment on whether an exclusion should be available to issuers (1) that make long-term investments that a banking entity could make directly, (2) that hold themselves out as entities or arrangements that make investments that they intend to hold for a set minimum time period, such as two years, (3) whose relevant offering and governing documents reflect a long-term investment strategy, and (4) that otherwise meet all the requirements of a qualifying venture capital fund (other than that the issuer would be a "venture capital fund" as defined in 17 C.F.R. Section 275.203(l)-1).

i. Its investment strategy or business purpose is to invest in assets in which a financial holding company would be permitted to invest directly under the BHC Act.[23]

ii. It holds itself out to investors as acquiring and holding long-term assets for at least two (2) years.

iii. It does not engage in activities that would constitute impermissible proprietary trading (as defined in the Volcker Rule) if conducted directly by a banking entity.

iv. If it is sponsored by a banking entity, (A) the sponsoring banking entity and its affiliates cannot, directly or indirectly, guarantee, assume or otherwise insure its obligations, (B) it must comply with the disclosure obligations under Section __.11(a)(8) of the Current Rule and (C) the sponsoring banking entity must comply with the limitations imposed by Section __.14 (except that the banking entity may acquire and retain any ownership interest in the issuer) and Section __.15 of the Current Rule, as if the Long-Term Investment Vehicle were a covered fund.[24]

These conditions would, taken together, ensure that a Long-Term Investment Vehicle will engage in investments that are permissible for financial holding companies under the BHC Act, are designed to promote long-term capital formation and needed economic growth, cannot be used to evade the Volcker Rule's restrictions on impermissible proprietary trading, and will remain subject to the Volcker Rule's limitations on transactions that could create "bail-out" risk or give rise to material conflicts of interest with clients or prudential concerns. Notably, funds whose mandates have large liquid trading baskets—or that engage in *any* proprietary trading—would not be able to qualify for this exclusion.

In addition to providing an exclusion for long-term investment funds, our proposal with respect to Long-Term Investment Vehicles would also have the benefit of excluding from the definition of "covered fund" certain entities that are inadvertently captured within that definition. In particular, the over-breadth of the Current Rule's definition of "covered fund" has restricted our ability to invest in certain incubator companies that provide capital and "know-how" to start-up companies and entrepreneurs and prevented us from investing in a company focused on providing minority investments to women-owned start-up companies. In our experience, incubator vehicles and other types of inadvertent covered funds—which are not investment funds, but rather are operating companies or platforms with employees that, because of their mix of assets, securities and intellectual property on their balance sheets and the particular contours and limitations of the Investment Company Act of 1940 (the "Investment Company Act")—may be treated as "covered

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[23] This condition, and the exclusion as a whole, would not permit a banking entity to invest through a Long-Term Investment Vehicle in any assets that the banking entity is otherwise prohibited from investing in directly (for example, pursuant to the restrictions on direct equity investments by national banks). 12 U.S.C. § 24(Seventh); 12 C.F.R. Part 1; see also 85 Fed. Reg. 12149.

[24] In our comment letter regarding the 2018 NPR, we recommended that the Agencies adopt an exclusion for Long-Term Investment Vehicles which would not have required that such a vehicle be subject to Super 23A as though it were a covered fund. We recognize that such a condition was included in the Proposed Rule's exclusions with respect to qualifying venture capital funds and credit funds. While we support the Trade Group Letters' recommendations to eliminate that condition from the exclusions for qualifying venture capital funds and credit funds, to the extent that the Agencies determine to adopt the condition as proposed, they could also determine to apply a similar condition to the exclusion for Long-Term Investment Vehicles.

funds" due to the characterization of their assets as investment securities. Even if these companies would not be "covered funds" at the time a banking entity is considering providing capital to these companies, banking entities may be discouraged or precluded from doing so given the risk that their asset composition could change.[25]

In any commentary that the Agencies may provide when adopting an exclusion for Long-Term Investment Vehicles, the Agencies should clarify that the exclusion is available not only to long-term investment funds, but also to inadvertent covered funds that meet the conditions of the exclusion. For example, the Agencies could note that the condition that the issuer must "hold itself out" as an entity that invests over a longer time period does not require that the excluded vehicle be an investment fund or other vehicle that seeks to raise capital from investors or distributes offering materials. It should be made clear that the exclusion is intended also to be available to inadvertent covered funds, which may not necessarily engage in active fundraising from third party investors (though to the extent that an inadvertent covered fund does make representations regarding its investment strategy, they should be consistent with the minimum holding period condition).

As noted in the Introduction to this letter, although we generally support the Proposed Rule's new exclusions, these proposals do not eliminate the need for a separate exclusion for Long-Term Investment Vehicles. Exclusions for qualifying venture capital funds and credit funds, for example, would be beneficial for some types of issuers and should be adopted, but they do not solve the overbreadth of the "covered fund" definition as it relates to incubator vehicles and other types of inadvertent covered funds.

- The exclusion for qualifying venture capital funds, if adopted in the form proposed,[26] would be of very limited practical use with respect to such issuers due to the requirements that a "venture capital fund" must satisfy under SEC Rule 203(*l*)-1. Incubator vehicles and other types of inadvertent covered funds rarely, if ever, hold themselves out as "pursu[ing] a venture capital strategy," as Rule 203(*l*)-1 requires. In addition, Rule 203(*l*)-1 imposes limitations on leverage and restrictions on the type of portfolio companies and securities issued by portfolio companies in which a venture capital fund may invest.[27] Incubator vehicles and other inadvertent covered

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25 As the Agencies observed in the NPR, there is a potential for a similar effect on banking entities' willingness to invest in small business investment companies ("SBICs"), which could be addressed by the Proposed Rule's modification to the exclusion for certain public welfare investment funds. We agree with the Agencies' rationale for that proposed modification and believe that a similar rationale—i.e., reducing compliance-related uncertainty that could discourage otherwise permitted investments—also supports adoption of the Long-Term Investment Vehicle exclusion. See 85 Fed. Reg. 12131 (noting that "banking entities may become discouraged from investing in SBICs due to concern that an SBIC may become a covered fund during its wind-down phase").

26 The Agencies could make modifications to the Proposed Rule's exclusion for qualifying venture capital funds in order to address these concerns. To that end, we support the recommendations made in the Trade Group Letters with respect to certain changes that should be made to the proposed definition of "qualifying venture capital fund."

27 Proposed Rule § _.10(c)(16)(i)(A); 17 C.F.R. §§ 275.03(*l*)-1(a)(3), (c)(3)-(4). SEC Rule 203(*l*)-1 restricts, among other things, the leverage that a fund may incur at 15 percent of its capital contributions and uncalled committed capital, and limits the extent to which a fund may own assets other than certain types of securities issued by qualifying portfolio companies and certain short-term holdings (*i.e.*, such assets must equal no more than 20% of the fund's aggregate capital contributions and uncalled capital commitments). The types of funds that could rely on the

funds will in many cases not be able to meet these criteria. These are operating businesses—not investment funds that may need to be "venture capital funds" in order for the adviser to qualify for an exemption from registration requirements under the Investment Advisers Act of 1940—and consequently are not operated and structured with the limitations of the "venture capital fund" definition in mind.

- Similarly, the utility of the credit fund exclusion with respect to such issuers is limited by the exclusion of equity interests from the list of permissible assets that a credit fund may hold (other than equity interests received on customary terms in connection with certain debt instruments).[28] As a result of this exclusion, an excluded credit fund may not have sufficient flexibility to provide capital to an incubator vehicle or other inadvertent covered fund at the appropriate layer of the borrower's capital structure. As discussed above, we recommend making modifications to the credit fund exclusion that would provide further flexibility in this regard, but even as modified, the exclusion would not be available to many Long-Term Investment Vehicles.

We reiterate our view that the Agencies have clear authority under Section 13(d)(1)(J) and Section 13(h)(2) of the BHC Act, which they have previously acknowledged and used in their rulemaking under the Volcker Rule, to exclude Long-Term Investment Vehicles, including inadvertent covered funds, from the definition of "covered fund."[29] Our comment letter to the 2018 NPR describes the basis for our view and provides a more detailed discussion of the foregoing recommendation, including the benefits of the proposed exclusion to economic growth and the way in which the conditions of the exclusion would help to ensure that it is consistent with safety and soundness principles.

## III. ENDORSEMENTS

We have participated in preparing comment letters on the NPR submitted by the Securities Industry and Financial Markets Association, the Financial Services Forum and the American Bankers Association (collectively, the "Trade Group Letters"). The Trade Group Letters address a number of important issues in detail and include recommendations to adopt many elements of the Proposed Rule, subject to certain modifications and clarifications, which we generally support. We call particular attention to the following recommendations made in some of the Trade Group Letters:

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qualifying venture capital fund exclusion are limited by these restrictions, and would be limited further still if the proposed exclusion were to be subject to conditions—which we believe are unnecessary and would be counterproductive to the purpose of the exclusion—that restrict the types of portfolio companies the fund could invest in (*e.g.*, a potential limitation on portfolio companies based on amount of annual revenue, which the NPR raises for comment). *See* 85 Fed. Reg. at 12136. As a result of these restrictions, funds that employ relatively modest amounts of leverage or make investments in issuers that fall outside the narrow definition of a "qualifying portfolio company" may be unable to rely on the exclusion as proposed.

28 Proposed Rule § _.10(c)(15)(i).

29 As the NPR notes, the Agencies have rulemaking authority under the Volcker Rule to "develop[] and adopt[] regulations to implement the prohibitions, restrictions, and exemptions of section 13." 85 Fed. Reg. at 12122; *see* 18 U.S.C. § 1851(b)(2). Our comment letter to the 2018 NPR discusses other bases for the Agencies' authority to adopt additional exclusions from the "covered fund" definition, including the statutory ambiguity of the terms "hedge fund" and "private equity fund" and the safety and soundness-promoting effects of the proposed exclusions.

- Adoption of the proposed exclusion for client facilitation vehicles, subject to certain changes and clarifications regarding the conditions to qualify for the exclusion;
- Streamlining the conditions of the foreign public funds exclusion;
- Adoption of the Proposed Rule's exemptions from Super 23A for certain types of covered transactions, subject to certain changes and clarifications;
- Adoption of the proposed exclusion for qualifying family wealth management vehicles, subject to certain changes and clarifications regarding the conditions to qualify for the exclusion.

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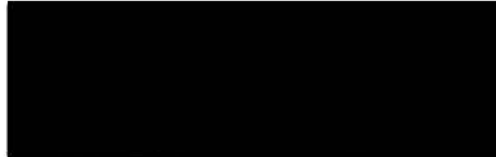
We appreciate your consideration of our comments and suggestions on the Proposed Rule. We would be happy to provide any additional information or to discuss any of our comments and suggestions with the Agencies in more detail.

Sincerely,



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