



March 26, 2020

Via electronic submission – www.regulations.gov

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219
Docket ID OCC-2020-0002

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

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

Vanessa Countryman, Secretary
Attn: Comments
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
File Number S7-02-20

Christopher Kirkpatrick, Secretary
Attn: Comments
Commodity Futures Trading Commission
1155 21st Street NW
Suite 3E-218
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

To Whom It May Concern:

The Commercial Real Estate Finance Council (CREFC) appreciates this opportunity to comment on the Agencies' proposed amendments to the Volcker Rule.¹ We welcome your efforts to provide more clarity around the requirements related to covered funds and to revise these sections to align them more closely with the market practice, safety & soundness considerations, and the statute's original intent.

CREFC's members represent U.S. commercial and multifamily real estate investors, lenders, and service providers – a market valued at an estimated \$6.3 trillion supported by \$4.4 trillion of commercial real estate (CRE) debt. Commercial banking organizations, insurance companies, Agency mortgage-backed

¹ Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Fed), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC), Joint Notice of Proposed Rulemaking, Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 85 Fed. Reg. 12120 (Feb. 28, 2020) (hereinafter "Proposal").

securities (Agency MBS), and the commercial mortgage-backed securities (CMBS) market are the top sources of financings for commercial and multifamily real estate.

With respect to the Proposal, CREFC’s interests are limited to areas that impact commercial real estate financings. In general, the Proposal would allow for greater efficiencies for securitizations in documentation mostly but also possibly in the pooling of assets, particularly for managed transactions, such as commercial real estate-backed collateralized loan obligations (CRE CLOs). As such, CREFC recommends that the Agencies consider the following:

Ownership Interest Safe Harbors

1. Senior Loans and Senior Debt Interests Safe Harbor

The Proposal includes a revised definition of “ownership interest” that provides clarity for debt interests issued by covered funds, including a safe harbor for senior loan and senior debt interests. In those cases, a fund’s ownership of debt instruments with these interests would not constitute an ownership interest.² Adding this specific safe harbor will be helpful in avoiding extensive legal and compliance analysis for certain securities, including for managed CRE CLOs.

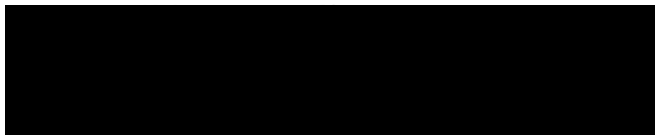
2. Clarifications on Manager Removal Rights

Similar to the senior loan and debt safe harbor for ownership interests, the Proposal would expand the current manager removal rights to allow a creditor, in the event of default or acceleration, to “participate in the removal of an investment manager for cause, or to nominate, or to vote on a nominated replacement manager upon the investment manager’s resignation or removal.”³ This safe harbor would provide additional clarity to assist in compliance analysis and properly distinguishes common debt security rights from equity rights.

* * *

Again, CREFC supports the Agencies’ efforts to meaningfully streamline Volcker regulations and to facilitate capital and credit formation efficiently and safely. We look forward to answering any questions the Agencies may have regarding these recommendations and the impact of the rule may have on the commercial real estate finance industry overall.

Sincerely,



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² See 85 Fed. Reg. at 12147.

³ See 85 Fed. Reg. at 12147.