The voice of banking
& financial services

13 February 2012

By Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Washington DC 20219

Commodity Futures Trading Commission
1115 21st Street, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Joint Notice of Proposed Rulemaking Implementing the Volker Rule: Federal Reserve Docket No. R-1432 and RIN 7100 AD 82; OCC Docket ID OCC-2011-14; FDIC RIN 36064-AD85;SEC File No. S7-41-11

Ladies and Gentlemen

PROPOSALS FOR THE IMPLEMENTATION OF THE VOLCKER RULE

The British Bankers' Association (BBA) is the leading association for the banking and financial services sector in the UK representing 230 banking organisations from 50 countries. We welcome the opportunity to comment on the proposed Volcker Rule regulations as they would impact international banks with operations in the US.

The BBA is aware that the Institute of International Bankers has submitted an in-depth analysis of potential unintended consequences stemming from the current proposal and is supportive of the arguments made in the IIB submission. The purpose of this short comment letter is simply to highlight some of the key issues and concerns from a UK and international perspective.

A key issue for many UK banks with US operations is the potential impact outside the US – in other words, the 'extraterritorial' effects of the Volcker Rule. We are concerned that the Volcker Rule, as currently drafted, would have a very negative impact on liquidity, price and volatility that will be felt broadly throughout the global financial markets. The international application proposed in the draft regulations subjects banks that operate in the US to the Volcker Rule compliance obligations in all jurisdictions. We believe that the proposed regulations would restrict the ability of financial institution intermediaries with US operations to make markets in fixed income and commodities instruments by effectively prohibiting warehousing acquired positions by market makers. In markets without intermediaries functioning as ready counterparties, investors will likely demand higher premiums or cease participating altogether as uncertainty of exit is priced into transaction costs. Ultimately, without modifications, these stipulations will result in decreased liquidity, widening spreads, and increased volatility, leading to an overall deterioration in market quality and an increase in the cost of capital that will be felt by market participants and issuers, including sovereign issuers, worldwide.

We welcome the proposed rulemaking's attempt at providing clarity to the Dodd-Frank Act's statutory exemption for activities conducted solely outside of the United States. However, we have legitimate concerns on how narrowly the exemption is defined, which results in non-US banks with a US lending presence having to apply the extensive compliance program requirements proposed under the Volcker Rule to virtually every customer-facing trading desk globally. The difficulty lies in the narrow interpretation of the term 'outside the US' which focuses not only on the location of the risk-taking activity but also on secondary and tertiary factors including the locations of counterparties and execution facilities respectively. In effect, a transaction is considered to have occurred 'solely outside the US' only when it meets each of the following four criteria: (i) the transaction is conducted by an entity that is not organized under US law; (ii) no party to the transaction is a US resident; (iii) no personnel of the entity directly involved in the transaction is physically located in the US; and (iv) the transaction is wholly executed outside of the US. To avoid triggering a Volcker violation or having to impose a very costly Volcker compliance framework on all of their non-US offices, some international banks are likely to be dissuaded from transacting with US customers and counterparties from their non-US offices, further disrupting US investor and corporate client access to international markets.

We would respectfully suggest that this interpretation of 'outside the US' appears to go beyond both the letter and the spirit of the statute itself. In the event that a non-US bank falls subject to the US Volcker Rule by virtue of meeting 'banking entity' definitions as proposed in the Rule, trades undertaken in the normal course of business outside the US (including in its home jurisdiction) with a US 'nexus' must now comply with the Volcker Rule's exemption requirements for trading activity. This would involve a major compliance burden, particularly in the key areas of underwriting, market making and hedging activity – with a considerable impact on the cost of operations. This could mean, inter alia, that the activities of an international bank in its home jurisdiction would be subject to constraints that were inconsistent with the home regulator's intentions/objectives. It is noteworthy also that alternative specific regulatory responses to the risks posed by proprietary trading are already being planned in certain jurisdictions – the UK ICB proposal is a case in point.

There are broadly parallel concerns with the extraterritorial application of the proposed wide-ranging restrictions on non-US banks in sponsoring/investing in hedge funds, private equity funds, and other investment structures falling under the 'covered funds' definition. While there is a foreign funds exemption, this is too limited and there are a variety of uncertainties as to its precise application. At a minimum, this exemption should be broadened to exclude from the scope of regulation any transactions between foreign funds and affiliated banks. We further note one presumably unintended consequence of the proposed framework is that while various US mutual funds would not be classified as covered funds (so that the restrictions would not apply) essentially similar funds in the EU and elsewhere would be deemed to be covered funds under the proposed regulations.

Reverting to the impact of the restrictions on principal risk taking, while the proposed rule would exempt trading by primary dealers in US government and related securities there is no corresponding dispensation for the trading of securities of non-US governments. We believe it would be essential for the exemption for government securities to apply more broadly and on the basis of objective, non-discriminatory, criteria. For many non-US banks, the trading of the government securities of their home jurisdiction is key to their treasury and liquidity management. Furthermore, the application of the rule as proposed could adversely impact liquidity for non-US government securities. The explicit exemption of US government obligations from the statute preserves liquidity in the US Treasury market. The US regulatory agencies should use their authority to extend this same exemption, on the same basis, to the obligations of international governments.

On timing, in light of the many complexities that need to be addressed, there are many aspects of the proposal that remain to be clarified. Inevitably, this will impact the timing associated with planning and preparations that need to be undertaken by industry participants, non-US banks included, to implement the Volcker requirements in an orderly fashion. We believe that it would be in the interests of all parties for this to be reflected in the timetable for implementation. As matters currently stand it is felt that the process would benefit from a second notice of proposed rulemaking ("NPR") open to industry comment prior to releasing a final rulemaking.

In conclusion, we would refer to the need for coordination and cooperation between regulators in different jurisdictions in their response to the financial crisis. For international banks this is of course crucially important given their multiple regulatory relationships. A key, and widely acknowledged, element in achieving such coordination is recognition of the overarching role of a bank's home regulator in 'whole bank' prudential matters. As drafted, the proposed rule would be inconsistent with this cardinal principle as it would mean that the regulatory restrictions arising would impact an international bank's operations on a global basis.

Once again we appreciate the opportunity to comment on the proposed rulemaking.

Yours sincerely

Angela Knight

Chief Executive