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## VIA ELECTRONIC DELIVERY

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Washington, DC 20219

Board of Governors of the Federal Reserve System  
20th Street & Constitution Avenue, N.W.  
Washington, D.C. 20551

Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, D.C. 20429

Securities and Exchange Commission  
100 F Street, N.E.  
Washington DC 20549

13 February 2012

Dear Ladies and Gentlemen

**Comments on OCC Docket No. OCC-2011-14; FRB Docket No. R-1432 and RIN 7100 AD 82; FDIC RIN 3064-AD85; SEC File No. S7-41-11: Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds.**

This letter is respectfully submitted by F&C Management Ltd ("FCM") in response to a request by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System ("Board"), Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission ("SEC"), (individually, an "Agency," and collectively, the "Agencies") for comments regarding the above-referenced releases, which propose rules to implement Section 619 of the Dodd-Frank Act, commonly known as the Volcker Rule (the "proposed rules").

FCM is authorised and regulated by the Financial Services Authority in the UK and is also registered as an Investment Adviser with the SEC (IARD/CRD: 111598; SEC 801-44724). FCM is a regulated subsidiary of F&C Asset Management plc ("F&C"). F&C is a diversified asset management group which is exclusively focused on providing investment solutions to our clients. Unlike many asset managers we are both independent (i.e. not part of a bank, insurance company or conglomerate) and we are also publicly listed. Our shares are traded on the London Stock Exchange (Ticker: FCAM.L) and we are a constituent of the FTSE 250 and FTSE All-Share indices.

The majority of the assets we manage are for institutional investors such as insurance companies and pension schemes. We are one of the largest fixed income asset managers in Europe and we provide a range of investment solutions to institutional investors. In addition to the core institutionally-focused F&C business, the Group today includes Thames River, a boutique fund manager with strong expertise in absolute return and multi-manager funds and F&C REIT, a global real-estate asset manager. Together we manage combined assets of over £100 billion across all the major asset classes – fixed income, equities, property and money markets – as well as in a number of specialist areas such as UCITS and non-UCITS funds, investment companies, hedge funds, funds of hedge funds, private equity and funds of private equity funds. We manage investments for a diverse range of institutional and retail clients who collectively represent the interests of more than 3 million individuals across the globe which we service from an office network spanning eight countries.

Given our broad range of activities, we welcome the opportunity to comment on the proposed rules. We hope that the Agencies find our submission helpful in developing a regulatory framework that is consistent

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with the mandates set forth by U.S. Congress in the Volcker Rule while at the same time not unnecessarily restricting or burdening business and conduct outside the United States that do not in any meaningful way pose a threat to the stability of the U.S. financial system.

We are members of the UK Investment Management Association (IMA) and the European Fund and Asset Management Association (EFAMA) and we are supportive of the detailed comments made on the proposed rules by these bodies on behalf of their members.

While we understand the difficulties faced by the Agencies in implementing the regulatory framework, we also share the concerns of IMA and EFAMA with aspects of the proposed rules as currently drafted. In particular we agree with IMA and EFAMA that:

- in their current form, the proposed rules represent an inappropriate extraterritorial application of United States jurisdiction and significantly exacerbate the negative impact that the Volcker Rule will have on the European fund and asset management industry without measurably furthering the purpose or intent of the Volcker Rule;
- these problems can be avoided, or at least substantially mitigated, without sacrificing the objectives of the Volcker Rule, through revisions to the proposed rules to clarify the application of several provisions and to tailor the scope of other provisions which are over-inclusive and unfair to non-U.S. funds and their asset managers and service providers;
- the definition of “covered fund” needs to be revised so that non-U.S. regulated funds are treated similarly to their U.S. counterparts, i.e. mutual funds and other investment companies that are registered with the SEC under the Investment Company Act of 1940 (the “1940 Act”) or are not required to register without relying on Sections 3(c)(1) or 3(c)(7) of the 1940 Act;
- there is a need to clarify and, if necessary, broaden the scope of the “solely outside of the United States” exception for covered fund activities to conform to industry norms and market practices as reflected in Regulation S under the Securities Act of 1933 (the “1933 Act”) to better effect Congressional intent and to limit the extraterritorial impact of the Volcker Rule’s provisions;
- there is a need to clarify that (i) both non-U.S. regulated funds and non-US covered funds that qualify for the “solely outside of the United States” exception from the Volcker Rule’s restrictions on covered fund activities should not be considered “banking entities” and (ii) non-U.S. covered funds that qualify for the solely outside of the United States exception should not be subject to the “Super 23A” restrictions under Section \_\_\_\_ .16 of the proposed rules.
- there is a need to modify the “sponsored fund” exception and clarify the meaning of the term “established” with respect to the sponsorship of covered funds by banking entities;
- there is a need to clarify that banking entities that provide customary custody, trustee and administrative services to non-U.S. regulated funds should not be deemed to be “sponsors” of such funds;
- there is a need to extend the exception from the proprietary trading prohibitions for U.S. government securities to the obligations of non-U.S. governments;
- maximum flexibility should be exercised in implementation of the Volcker Rule’s provisions to minimize the negative impact on market liquidity;

- there is a need to clarify that the underwriting, market making and insurance company exceptions provided for in the Volcker Rule are equally applicable to banking entities' covered fund activities as they are to their proprietary trading activities; and
- the Agencies should apply the final rules and exceptions flexibly, focusing on substance over form, to achieve the Volcker Rule's objectives without unnecessarily restricting activities that do not pose risks to the financial stability of the United States.

We appreciate the opportunity to comment on the proposed rules and we welcome further constructive dialogue with a view to delivering effective, proportionate regulation which meets the needs of investors, firms and markets alike. Please do not hesitate to contact us if you have any queries regarding our comments contained herein.

Yours faithfully



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