February 10, 2012

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219
Docket No. OCC-2011-0014
RIN 1557-AD44

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
RIN 3235-AL07
File No. S7-41-11

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R-1432
RIN 7100 AD 82

David A. Stawick, Secretary of the Commission
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
RIN: 3038-AD05

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Comments
RIN 3064-AD85

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

Dear Ladies and Gentlemen:

The National Trust for Historic Preservation ("National Trust") and the Historic Tax Credit Coalition ("HTCC") are pleased to have the opportunity to respond to the Notice of Proposed Rule Making request for public input related to the implementation of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the so-called "Volker Rule." We have chosen to respond to questions 276-280 to demonstrate our unconditional support for Section 619, which clarifies the definition of "public welfare" investments to explicitly include federal and state historic tax credit equity investments.

The National Trust (www.PreservationNation.org) is a privately-funded, federally-chartered, nonprofit organization that works to save America's historic places for the next generation. It is committed to protecting America's rich cultural legacy and to helping build vibrant, sustainable communities that reflect our nation's diversity. The National Trust takes direct action to save the places that matter while bringing the voices of the preservation movement to the forefront nationally.

The HTCC (www.historiccredit.wordpress.com) is a group of historic tax credit industry representatives who have come together to help develop a consensus on ways to modernize the federal Historic Tax Credit (HTC). Its members are tax credit syndicators, investors, tax attorneys, accountants, preservation consultants and real estate developers who are involved in the business of using the HTC as a financing tool to promote economic development through the rehabilitation of historic properties. The HTCC's activities include research on the economic impact of the HTC, the development of legislative and regulatory proposals to promote the simplification and greater use the HTC, and efforts to foster greater communication between the National Park Service, the Internal Revenue Service and the HTC industry.

Question 276 - Is the proposed rule's approach to implementing the SBIC, public welfare and qualified rehabilitation investment exemption for acquiring or retaining an ownership interest in a covered fund effective? If not, what alternative approach would be more effective?

The National Trust and HTCC strongly endorse the definition of a public welfare investment as stated in Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Banks have been significant investors over the years in federal and state historic tax credits. These lending institutions have consistently sought Part 24 approval (or equivalent approval depending on their federal regulator) as well as CRA credit for these investments. Historic tax credit syndicators who are members of the HTCC have reported that under previous, stricter definitions of public welfare investments, lenders have been uncertain of whether regulators would approve these investments under Part 24, necessitating a deal-by-deal inquiry.

Question 277 - Should the approach include other elements? If so, what elements and why? Should any of the proposed elements be revised or eliminated? If so, why and how?

The National Trust and HTCC support the continued inclusion of the federal Historic Tax Credit and state Historic Tax Credits (HTC) in the definition of public welfare investments. As elaborated in more detail in the answers to Q278-280 below, the data show that these federal and state investments have a proven track record of promoting economic development, creating jobs and revitalizing residential and commercial neighborhoods in urban, rural and small town communities across the nation.

Based on research conducted for the HTCC by Rutgers University's Center for Urban Policy Research (attached), the federal HTC, over the past 32 years, has leveraged $90.4 billion in private sector investments to help rehabilitate over 37,000 historic properties. At a total federal cost of $17.5 billion, the leverage ratio is approximately 5-1. Rutgers research has further shown that federal HTC investments have been responsible for creating 2 million jobs, $30.6 billion in federal, state and local taxes, $76.3 billion in household and business income, and generating gross domestic product of $103.8 billion.[1]

These estimates measure impacts only through construction completion and do not include jobs, income and tax impacts generated after historic properties are placed in service, nor the economic impacts of heritage tourism often associated with these historic sites. These findings are estimated through the use of an input-output model called the Preservation Economic Impact Model (PEIM) developed for the National Park Service by Rutgers University. It is the only economic impact model that is adapted to measure the economic benefits of historic rehabilitation.

Even though federal and state HTCs are not targeted to qualified low-income census tracts, because many historic properties are located in inner-cities, there is a high degree of correlation between the location of these investments and communities in economic distress. Research by the National Trust's tax credit subsidiary, National Trust Community Investment Corporation (NTCIC), has shown that between 2002 and 2008 two-thirds of all federal HTCs have been invested in census tracts eligible for the new markets

[1] "Second Annual Report on the Economic Impact of the Federal Historic Tax Credit", (May 2011), Summary Exhibit 1, page 11.

tax credit.2 Further research by NTCIC indicates that, in the first 4 rounds of the NMTC program, 10% of all NMTC transactions and 20% of the dollar volume of NMTC transactions twinned historic and new markets tax credits.3 State historic tax credits have similar impacts on low-income communities because they are almost always twinned with federal HTCs.

Rutgers research and the work of economist Donavan Rypkema both conclude that historic rehabilitation is a more efficient producer of jobs than new construction.4 Rehabilitation is more labor intensive than new construction and, for some trades, requires hiring more skilled, higher wage labor. Because materials for rehabilitation are purchased primarily in the local market, on average, 75% of the economic impact of historic property redevelopment stays in the local economy.

Historic rehabilitation is an inherently green activity. Recycling old buildings reduces landfill waste and saves energy by reusing existing materials rather than manufacturing new building components such as doors, windows, roofing and framing. Reusing existing buildings typically offers environmental savings over demolition and new construction – even if that new construction is energy-efficient.5 Rehabilitation is also an outstanding smart growth strategy, channeling public and private resources into existing communities supported by roads, utilities, schools and sewage facilities. Historic buildings have the unique ability to foster a sense of place which helps differentiate central business districts and small town centers and give them a market advantage.

Because of the proven community revitalization, job creation, smart growth and green benefits noted above, the National Trust and HTCC believe that all federal and state HTC equity investments should remain exempt from the Volker Rule and included in the definition of public welfare investments.

Question 278. Should the proposed rule permit a banking entity to sponsor an SBIC and other identified public interest investments? Why or why not? Does the Agencies' determination under section 13(d)(1)(J) of the BHC Act regarding sponsoring of an SBIC, public welfare or qualified rehabilitation investment effectively promote and protect the safety and soundness of banking entities and the financial stability of the United States? If not, why not?

The National Trust and the HTCC believe the proposed rule does and should promote banking entities to sponsor historic rehabilitation through federal and state HTCs by forming tax credit funds to make multiple investments. The National Trust Community Investment Corporation has long-standing investor relationships with Bank of America, US Bank, PNC, SunTrust, Citibank, Trustmark Bank, Key Bank and Capital One to invest primarily in twinned historic and new markets transactions that span over a decade of investment activity totaling over $437 million in equity investments and new markets leveraged debt. These investments have had broad, demonstrable, economic impacts in communities of additional distress as defined by the US Treasury's CDFI Fund including the creation of 26,347 direct, indirect and induced jobs and the generation of $112.8 million in state and local taxes, $1billion in household and business

[2] HTC census tract data analyzed for a presentation by National Trust Community Investment Corporation, "Utilizing Historic Tax Credits to Rehabilitate Historic Buildings", (2008).
[3] HTC and NMTC twinned transaction data based on results from "Survey of CDEs that Regularly Invest in HTC/NMTC Transactions", National Trust Community Investment Corporation, (November 2007).
[4] Donovan Rypkema, "The Economics of Historic Preservation: A Community Leader's Guide", Washington, D.C. National Trust for Historic Preservation (2005), page 14.
[5] National Trust for Historic Preservation, "The Greenest Building: Quantifying the Environmental Value of Building Reuse", (2012).

income and $1.23 billion in gross state product. All of these investments have been deemed eligible for CRA credit on projects that, but for the historic tax credits, would never have been completed.6

Federal and state historic tax credits have proven to be safe and sound investments for a cross section of banking, manufacturing and insurance companies over the years. The attached study commissioned by the National Trust, conducted by Novogradac and Company, and released this month shows the federal HTC has outperformed secured commercial loans between 2001-2010. The cumulative 10-year federal HTC recapture rate has been less than three quarters of one percent (.73%). The electronic survey was conducted over the past 3 months. Respondents included investors representing over 50% of federal HTC investment volume and a total of 653 transactions. Out of the 653 transactions, there were only 7 incidents of recapture. Of the total of $3 billion in HTC investments made by the survey respondents, the dollar amount of recapture was only $22 million. By comparison, annualized commercial loan defaults over the same period were 1.02% of invested capital. While there is insufficient data to convert the HTC 10-year cumulative recapture rate to an annualized number, data obtained from the IRS forms for 2008 indicates that the rate of HTC recapture for 2008 was .07%.7

The attached report attributes the stellar performance of historic tax credit investments to several factors including (1) careful underwriting and the application of strict underwriting criteria by HTC investors to these equity investments, (2) the size of these third-party nongovernment investments (typically in excess of $1 million dollars) which leads investors to carefully review these transactions, (3) the development of standardized legal structures and asset management procedures to protect these investments over the five-year compliance period, (4) construction and lease-up risk borne by private developers and investors which generates a high level of monitoring and asset management oversight and (5) regulatory guidance from the IRS.8

In the opinion of the National Trust and the Historic Tax Credit Coalition, and based on the study results, the proposed rule supports the safety and soundness of the banking system by encouraging banks to make equity investments in historic rehabilitation projects.

Question 279. What would the effect of the proposed rule be on a banking entity's ability to sponsor and syndicate funds supported by public welfare investments or low income housing tax credits which are utilized to assist banks and other insured depository institutions with meeting their Community Reinvestment Act ("CRA") obligations?

The proposed rule helps banks meet their CRA obligations by encouraging historic rehabilitation which, in most instances, can meet lender obligations under the Community Investment Act. Clearly not every HTC investment meets one or more of the tests for qualification under CRA. There are no existing data on this point. But we believe, from the data included above, that the majority of HTC projects do qualify. We know from available data that two-thirds of these investments occur in qualified low income census tracts. In addition to the data discussed above on the twinning of HTCs and NMTCs, NTCIC has determined from a 2011 state-by-state survey of allocations of low-income housing tax credits (LIHTC) that approximately 6% of LIHTC transactions (approximately $425 million in credits) twinned the HTC

[6] National Trust Community Investment Corporation, Internal Report, (2012).
[7] National Trust for Historic Preservation and Novogradac & Company, "Historic Rehabilitation Tax Credit Recapture Survey", (February 2012).
[8] Ibid.

Based on the data cited above, the National Trust and the HTCC believe there is a high degree of correlation between projects that utilize federal and state HTCs and transactions that help banks meet their CRA obligation.

Question 280. Does the proposed rule unduly constrain a banking entity's ability to meet the convenience and needs of the community through CRA or other public welfare investments or services? If so, why and how could the proposed rule be revised to address this concern?

The National Trust and HTCC believe that the proposed rule *assists* rather than constrains banking institutions in meeting their CRA obligations by creatively using federal and state historic tax credits in combination with other federal incentives to meet the needs of low-income communities.

Sincerely,

Thomas J. Cassidy

Thomas J. Cassidy, Jr.
Vice President for Government Relations & Policy
National Trust for Historic Preservation

John Leith-Tetrault

John Leith-Tetrault
Chairman
Historic Tax Credit Coalition