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By electronic submission

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Office of the Comptroller of the Currency
250 E Street, S.W., Mail Stop 2-3
Washington, D.C. 20219

Re: <u>Comment Letter on Notice of Proposed Rulemaking Implementing the Volcker Rule - Hedge Funds and Private Equity Funds</u>

Federal Reserve Docket No. R–1432 and RIN 7100 AD 82; FDIC RIN 3064–AD85; OCC Docket ID OCC–2011–14; SEC File No. S7–41–11; CFTC RIN 3038–AD05

Dear Ladies and Gentlemen:

State Street Corporation appreciates the opportunity to comment on the notices of proposed rulemaking[1] (the "Proposed Rule") issued by the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Securities Exchange Commission (collectively, the "Agencies") to implement Section 619 of the Dodd-Frank Act (the "Volcker Rule").

[1] Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 76 Fed. Reg. 68,846 (Nov. 7, 2011); 77 Fed. Reg. _____ (___, 2012).

Headquartered in Boston, Massachusetts, State Street specializes in providing financial services to institutional investors, including investment servicing, investment management and investment research and trading. With $21.8 trillion in assets under custody and administration and $1.9 trillion in assets under management, we operate in 29 countries and in more than 100 geographic markets worldwide.[2] State Street is organized as a financial holding company and conducts operations through several entities, primarily its wholly-owned bank subsidiary, State Street Bank and Trust Company.

State Street has participated in drafting numerous joint and industry comments on the Proposed Rule, including letters from SIFMA/Financial Services Roundtable/The Clearinghouse/ABA, others from the ABA, the ICI, and AGC, the RMA, and a joint custody bank letter submitted with Northern Trust and BNY Mellon, and others. While we support the recommendations contained in these comment letters, our comments today highlight certain issues of particular concern to State Street, and suggest changes the Agencies should make to address these concerns.

In summary, we recommend the Agencies:

- Narrow the definition of "covered fund" to align with commonly accepted hedge fund and private equity fund characteristics;

- Clarify the "Super 23A" limitation on transactions a banking entity may engage in with "covered funds" banking entities to permit traditional custodial services;

- Clarify the "directed trustee" exception from the definition of "sponsor" to address non-US directed trustee and similar relationships;

- Provide a clear exception from the definition of "trading account" under the proprietary trading section for activities related to the central clearing of swaps;

- Clarify that securities lending collateral pools are not "covered funds," and that borrower indemnification provided by agent securities lenders are permitted under "Super 23A;"

- Extend the exception from the definition of "covered position" for foreign exchange spot trades to foreign exchange swaps, forwards, and options;

- Replace the proposed "liquidity management" exception from the proprietary trading prohibition with a broader "asset-liability management" exception;

- Reduce the potential negative impact on municipal securities markets by extending the exception to the proprietary trading prohibition for States and their political subdivisions to their agencies, and by clarifying the municipal TOB programs fall outside of the definition of "covered funds;"

- More closely align the proprietary trading compliance burden with the size, complexity, and risk of a banking entity's trading activities;

- Announce, in the near term, a delay in the July 21, 2012 statutory effective date; and

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[2] As of December 31, 2011

- Repropose the rule, to allow for additional public comments.

More detailed discussion of our concerns and recommendations follows below.

Definition of Covered Fund

State Street strongly opposes the proposed definition of “covered fund,” and urges the Agencies to adopt a revised definition more consistent with both Congressional intent and conventional definitions of “hedge fund” and “private equity fund.”

First, while all U.S. “hedge funds” or “private equity” funds can probably be assumed to rely on the 3(c)(1) or 3(c)(7) exceptions to the Investment Company Act, the converse is not true --- not all 3(c)(1)/(7) funds are “hedge funds” or “private equity funds.” Numerous corporate or investment structures have evolved over the years under 3(c)(1)/(7), many of which have none of the features commonly associated with hedge funds or private equity funds, and which present none of the risks Congress intended to address by limiting bank investment of sponsorship of such funds.

Second, while including “commodity pools” that in practice operate as hedge funds, but that do not rely on the 3(c)(1)/(7) exclusions, may be reasonable, the Proposed Rule’s definition of such “commodity pools” is overly broad, and could include any mutual fund that uses commodities in any way, including futures for limited hedging purposes. Ancillary use of futures is common in most funds, including index funds, and the approach adopted in the Proposed Rule would effectively deem many registered mutual funds and other entities exempted from the Investment Company Act “covered funds” for purposes of the Volcker Rule.

Third, the approach to “foreign equivalents” of “covered funds” is excessively broad, and captures all non-US funds, regardless of their investment strategy, leverage, or any other factors typically associated with “hedge funds” or “private equity funds.” The approach proposed by the Agencies would, for example, capture as a “covered fund” a publicly offered UCITS index fund offered outside the United States --- a result impossible to reconcile with Congressional intent, and which will put banks subject to the Volcker Rule at a severe competitive disadvantage overseas, with no reduction in either systemic or individual firm risks. While not structured to meet the specific requirements of the U.S. Investment Company Act, most of these funds are simply the non-U.S. equivalent of U.S. mutual funds. As with commodity pools, the inclusion of “foreign equivalents” within the scope of covered fund is neither required by the language of the Act itself or the legislative history, but instead represents a regulatory extension of the scope of the Volcker Rule.

As a result, we urge the Agencies to adopt the following changes to the proposed definition of “covered funds” to:

1) Create a “safe harbor” for non-U.S. funds operating under regulatory or contractual limitations similar to those imposed on U.S. mutual funds;
2) Limit captured “commodity pools” to those principally engaged in trading commodities; and
3) For all possible types of “covered funds” --- U.S. 3(c)(1) and 3(c)(7) funds, non-US foreign equivalents, and commodity pools --- establish qualitative criteria limiting the scope of the “covered fund” definition to funds with commonly understood hedge fund

and private equity fund characteristics, including limited redemption rights, performance fees, and use of leverage or short selling.

Custodial Banking Services under "Super 23A"

As a custodial bank, State Street provides investment fund customers with a range of credit and other services which smooth and facilitate the operation of global financial markets, including the settlement of securities. These include intraday or overnight advances to address timing differences between securities settlement systems, contractual settlement based on expected settlements, and contractual income payments based on expected receipt of income payment. In each of these cases, the provisional credit is provided in expectation of income to be received on the day of settlement or payment, though in exceptional cases (*e.g*. a settlement failure) the credit may extend beyond one day, and the credit is fully reversible should expected funds fail to be delivered.

These custodial bank functions are essential to the smooth operation of the securities settlement system. We are concerned, however, that the "Super 23A" provisions of the Volcker Rule could be read to prohibit such ordinary course of business services to "covered funds" where we provide custodial services. While we understand Congress intended through "Super 23A" to prevent banks from "bailing out" sponsored hedge funds or private equity funds, these custodial extensions of credit create no risk of "bailouts" and the legislative intent in such regard is achieved by other provisions of the Proposed Rule. Preventing custodians from providing such credit to a subset of investment funds, whether sponsored by the custodial bank or not, will disrupt the securities settlement process.

We urge the Agencies to clarify that "Super 23A" does not limit the ability of custodial banks to provide provisional credit or advances in connection with custodial or administrative services to "covered funds."

Definition of "Sponsor"

State Street strongly supports the "directed trustee" exception to the definition of "sponsor" including in the Proposed Rule. The "directed trustee" exception rightly recognized that a literal reading of the statutory "sponsor" definition could capture numerous structures, such as pooled ERISA vehicles, where a custodial bank assumes a limited, directed trustee role, but where investment discretion --- *i.e*., the true "sponsorship" of the fund --- lies with an independent third party. The "directed trustee" exception will permit custodial banks to continue to provide traditional custodial and administrative services to many of these customers, particularly in the U.S.

Given the global reach of the Proposed Rule, however, we are concerned that the proposed "directed trustee" exception may create some ambiguity in relation to certain non-U.S. fund structures that may be captured as "covered funds." Our trustee arrangements in non-U.S. markets, of course, follow local laws and market practice, which may vary from typical U.S. arrangements. The custodial bank may, for example, retain a residual right to terminate an asset manager.[3] In these cases, while the services we provide are directed, and there is a third party advisor with investment discretion, the specific legal structure may not fall squarely within the proposed "directed trustee" exception.

[3] See joint State Street/BNY-Mellon/Northern Trust comment letter for a detailed description of non-US trust arrangements.

We request the Agencies clarify the "directed trustee" exception to provide the "exercise of investment discretion with respect to a covered fund" does not include 1) possessing authority to appoint or remove an investment advisor or 2) exercising such authority as part of a demonstrable fiduciary responsibility, provided the directed trustee does not appoint itself as the investment advisor.

Central Clearing Activities

State Street suggests the Agencies provide greater clarity regarding the treatment of clearing-related activities under the proprietary trading section of the Proposed Rule.

Movement toward central clearing of swaps is a very high global regulatory priority, and is mandated under Title VII of the Dodd-Frank Act. U.S. banks, including State Street, are members of swaps clearinghouses, and will play a critical role in the emerging shift to central clearing. While such clearing activities can result in taking principal positions in swaps (either through clearing trades, or the default management process), or may otherwise potentially trigger coverage by the "trading account" provisions of the Proposed Rule (such as through dealer registration), they are not proprietary trading, and should clearly fall outside of the Proposed Rule's proprietary trading restrictions.

Under the Proposed Rule, while we expect clearing-related activities would not be considered prohibited proprietary trading, either as a result of not meeting the definition of "trading account," or as a result of being excluded as activity "on behalf of customers," we urge the regulators to provide greater clarity, and add an express exception from the definition of "trading account" for clearing-related activity by banking entities.

Securities Lending

Securities lending transactions are an important element in today's capital market, facilitating trade settlement and adding global market liquidity. Providing such securities lending services, primarily on an agency basis, is an important service custodial banks offer their customers, and has been recognized by regulators as a traditional banking service.[4]

We strongly support the proposed exemption for securities lending activity, including the proprietary trading section of the Proposed Rule, and agree with the Agencies that a securities lending transaction is "a means to facilitate settlement of securities transactions, and is not based on expected or anticipated movements of asset prices… and therefore is not intended to be covered by the statutory definition of trading account."

We suggest greater clarification, however, of the treatment of securities lending transactions under the "covered funds" section of the Proposed Rule.

First, while sometimes structured under the 3(c)(1) or 3(c)(7) exceptions to the Investment Company Act, securities lending collateral pools have none of the commonly understood characteristics of hedge funds or private equity funds, and present none of the risks the Volcker Rule is intended to address. Banks manage such pools as fiduciaries for their customers, and do not involve investment of bank capital. They are well regulated under existing banking law. As a

[4] Statute and regulatory guidance have long recognized that the traditional banking services of loan, discount, deposit, and trust services expressly include providing custody and securities lending services.

result, we suggest the Agencies use their discretion to clarify that such cash collateral pools are not "covered funds" for purposes of the Volcker Rule.

Second, custodial banks routinely offer borrower default indemnifications in connection with securities lending transactions. In these arrangements, a bank indemnifies a lending fund against default of the securities borrower. While such transactions are already over-collateralized, the indemnification provides lenders assurance that securities will be returned when needed. The indemnification in no way guarantees the investment performance of the fund, only the return of the full volume of lent securities. When acting as principal as a lender or borrower, the participant has credit exposure to the counterparty to the loan; however, when acting in an agency capacity, a bank arranging a loan is not acting as principal. We believe the Agencies should clarify that such an indemnity is not intended to be treated as a credit exposure for purposes of Super 23A, which instead was intended to cover principal positions.

We are concerned that the "Super 23A" provision of the Proposed Rule may be interpreted to preclude a banking entity from providing indemnified agency securities lending to sponsored "covered funds." As noted above, indemnified securities lending is an important service provided to fund customers of custodial banks, and raises none of the risks the Volcker Rule is intended to address. We urge the Agencies to clarify that indemnified agency securities lending for sponsored "covered funds" would not be prohibited under the "Super 23A" provisions of the Volcker Rule.

Foreign Exchange

While State Street strongly supports the exception from definition of "covered financial position" with respect to the proprietary trading rules for spot foreign exchange, we are concerned by the potential negative consequences of not extending a similar exemption to foreign exchange forwards and swaps, which, like foreign exchange spot transactions, have long been considered traditional banking activity.

Like foreign exchange spot trades, foreign exchange swaps and forwards are critical parts of the global payments system. Such swaps and forwards are overwhelmingly short-term, and trading in well-developed, highly liquid global markets. Foreign exchange is critical to global trade, and is an important element in conducting monetary policy. While dealing in foreign exchange necessarily requires taking proprietary positions, given the nature of foreign exchange markets, such trading does not present the types of risk to banking entities that the Volcker Rule is intended to address, and we are concerned that the "market-making" exception from the Volcker proprietary trading rules may be unduly restrictive on banks seeking to provide liquidity to the foreign exchange marketplace.

We urge the Agencies to extend the exception from the definition of "covered position" provided for foreign exchange spot transactions to similar forwards and swaps.

To the extent that any foreign exchange contracts are included in the definition of "covered position" we urge the Agencies to adopt compliance metrics specifically tailored to foreign exchange trading activity. Given the unique characteristics of global foreign exchange markets, a significantly simplified quantitative evaluation would be sufficient to distinguish between legitimate market-making and banned proprietary trading. For instance, the Agencies could leverage existing industry practice of monitoring acceptable levels of-risk-through daily VaR calculations. Currently, most dealers calculate and publish a daily VaR by product. This VaR could be monitored relative to levels of client activity/market making activities for each swap dealer to regulate acceptable levels of risk from these activities. All that needs to be done is to developed metrics for levels of market-making activity and mapping these levels back to acceptable ranges of VaR. It would require far less infrastructure from the swap dealer and lower levels of overhead for the regulatory agencies. Both measures are now readily available to banking entities and regulatory agencies. Employing such an approach would significantly simplify reporting while clearly demonstrating that trading in foreign exchange is consistent with the Volcker market-making exception.

Asset-Liability Management

State Street supports the FSOC Volcker Study recommendations related to asset-liability management ("ALM"), which recognized that

> "All commercial banks, regardless of size, conduct asset-liability management ("ALM") that help the institution manage to a desired interest rate risk and liquidity risk profile. ALM activities are clearly intended to be permitted activities, and are an important risk mitigation tool."

The recognition that legitimate ALM activities are distinct from the trading activities that the Volcker Rule is intended to address is particularly important for custodial banks, such as State Street which, unlike typical commercial banks, manage a liability-driven balance sheet, do not make traditional loans, and have extensive holdings of securities on the asset side of the balance sheet.

Preferred Approach: an ALM exclusion

While we believe State Street's ALM activities fall squarely outside of the intended scope of the Volcker Rule's prohibition against proprietary trading, and expect all of these activities would be permissible under various exclusions or exemptions of the Proposed Rule, we are concerned that the Propose Rule falls short of meeting the FSOC Study recommendation related to ALM, and would create an unnecessarily complex compliance exercise for banks seeking to demonstrate that their ALM activities are Volcker compliant. We are particularly concerned that the proposed "liquidity exclusion" is too narrow, and would require banks to justify many legitimate ALM activities under other exceptions to the Proposed Rule.

For example, for a custodial bank, while liquidity management is certainly a key factor, the management of the asset side of the balance sheet addresses other issues as well, including the interest risk profile of the custodial deposits on the liability side, and the return on investment of the investment portfolio. While none of these activities involve the "short-term" trading that the Volcker Rule is intended to address, it is not clear that all such legitimate ALM activities should be included in the liquidity management plan around which the proposed "liquidity exclusion" revolves. As a result, custodial banks may be required to combine various proposed exceptions --- liquidity, definition of "short-term" trading, hedging, etc. --- to demonstrate compliance of ALM activities with the Volcker Rule. Such an approach increases compliance costs, but, probably more importantly, will greatly complicate the ability of regulators to assess compliance. As an alternative, we urge the Agencies to replace the proposed "liquidity exclusion" with a broader "asset-liability management" exclusion. Under this approach, banks, including custodial banks, would be deemed to be in compliance with the Volcker Rule for all activities a bank can demonstrate are part of a bona fide ALM policy. Such an exclusion would, of course, need to be properly designed to avoid creating a "loophole" for impermissible proprietary activity, but we believe those concerns could be addressed through clear rules defining "bona fide ALM policy" and the associated compliance program requirements, which will facilitate and simplify the supervisory review process.

We believe such activities are, by definition, permissible under both the letter and spirit of the Volcker Rule, and that an ALM exclusion would be consistent with the Agencies' findings in the FSOC Volcker Study.

Other ALM related recommendations

As noted above, our preferred approach to ALM is to create a specific ALM exclusion. While we strongly urge the Agencies to move in that direction, we offer the following additional suggestions, in the context of the current Proposed Rule:

- *Rebuttable presumption for investment of operationally linked deposits:* As mentioned above, custodial bank balance sheet management differs significantly from traditional commercial banks. Custodial bank balance sheets are generally driven by liabilities --- the deposits resulting from providing custodial services. These deposits are then invested, largely in high-quality securities, in conformance with the bank's ALM policy. The unique nature of these balance sheets has been recognized by regulators in a variety of contexts, including recent FDIC changes to its deposit insurance assessment system, where "custody deposits" are afforded special treatment, and the emerging Basel III liquidity framework, where "operationally linked" deposits are treated differently than other demand deposits. The investment of these deposits is not intended to generate short-term profits, and the investment horizon is well beyond the 60-day rebuttable presumption proposed by the Agencies, but circumstances may sometimes dictate holding such assets less than 60 days. Under the Proposed Rule, these transactions would be presumed to be banned proprietary trading, and the custody bank would need to establish a process to rebut this presumption. Given the nature of their balance sheets, we believe this presumption places an unnecessary burden on custodial banks. As an alternative, we suggest the Agencies provide a rebuttable presumption that transactions related to the investment of custody banks' operationally linked deposits are not "short-term trading" for purposes of the Volcker Rule.

- *Elimination or Clarification of the "Status Test":* As a general matter, State Street believes that the "status" prong of the trading account definition should be eliminated. The Dodd-Frank Act's statutory language clearly focuses the definitions of "proprietary trading" and "trading account" on a banking entity's intent to generate profits from short-term price movements of securities, not its registration status, and we urge the Agencies to refine the Proposed Rule to more accurately reflect the Dodd-Frank Act, and eliminate the "Status Test."

  If some version of the "status" prong of the trading account definition is retained, its scope should be narrowed and the reference to "activities" should be clarified. For example, the proposed CFTC and SEC rules relating to swap dealer registration apply at the legal entity level and do not permit limited registrations based on specific types of financial instruments. As a result, for a bank registered as a swap dealer due to the activities of a single trading desk, all business units would be considered a swap dealer for all types of swaps. While the proposed Volcker Rule does acknowledge in a footnote (see footnote 107) that positions taken in connection with activities of an insured depository institution that do not trigger registration as a swap dealer, such as lending, deposit-taking, the hedging of business risks or other end-user activity would only be included in the trading account if the position met one of the other prongs of the trading account definition, it is unclear how broadly or narrowly the term "activities" would be interpreted by the regulators. We are concerned that transactions conducted for legitimate asset-liability management purposes, and completely unrelated to the trading desk that triggered swap dealer registration, could somehow be interpreted to violate the "Status Test."

We urge the Agencies to clarify that the "Status Test" would not be violated, regardless of the type of financial instrument, by non-dealing activities of a business unit of a registered dealer "banking entity," provided:

1) The non-dealing activities are conducted in a business unit that is separate from the business unit whose activities require registration, and

2) The business units conducting the activities would not, by themselves, trigger dealer registration.

- *Interaffiliate transactions:* ALM activities are managed, from an economic perspective, in a consolidated basis. Due to the global nature of State Street's business model, and, in part, due to limits imposed by Reg K, we often execute interaffiliate transactions, which may be covered transactions for purposes of the Proposed Rule. Such transactions are strictly internal to the consolidated banking entity, and do not involve external markets. They are an essential part of the ALM process, and the Agencies should ensure such interaffilate transactions are not prohibited by the Volcker Rule

- *Risk-mitigating hedging exception reporting metrics***:** We are concerned that the proposed metrics for measuring compliance with the risk hedging exception are inappropriate for transactions conducted as part of an ALM process. The Proposed Rule's requirement that risk-mitigating hedges only cover risks to which it is "already exposed," and its requirement that hedges not "earn appreciably more profits on the hedge than it stood to lose on the related position" are not reflective of the accounting and risk management priorities of ALM activity. In addition, the proposed reliance on VaR and Stress VaR to demonstrate bona fide hedging is misleading for ALM activities, due to the typical accounting asymmetry in ALM, where, for example, managed liabilities, such as deposits are not mark-to-market, but the corresponding hedge may be. We urge the regulators to adopt a risk-mitigating hedging exception more aligned with ALM practices.

Municipal Market Impact

State Street is concerned that the Proposed Rule could have an adverse impact on the municipal securities market, impairing liquidity and increasing borrowing costs for municipal bond issuers. We believe these negative consequences can be avoided by broadening the exemption for municipal securities from the proprietary trading rules and by exempting municipal tender-option bond (TOB) programs from the definition of "covered fund."

Treatment of State and Local Agencies

While we support the exclusion from the proprietary prohibition provided for trading in both limited and general obligations of States and their political subdivisions, we are concerned by the Proposed Rule's failure to extend this exclusion to similar obligations of agencies of such government entities. We believe this proposed bifurcation of the municipal market would have a range of adverse consequences.

First, it would provide a confusing distinction that is not consistent with how issuers and investors have traditionally viewed the municipal market. Certain governmental authorities prefer to finance certain projects through general or limited obligation debt, while others finance the same types of projects with municipal agency debt. Constituting a significant portion of the municipal securities market, municipal agency debt is used to fund wide-ranging public purposes, including basic infrastructure, utility systems, and affordable housing. Furthermore, because agency debt serves essential public purposes and relies on generally safe funding sources, we do not believe that municipal agency debt inherently introduces greater credit risk than general or limited obligation debt.

Second, we believe that preventing banks from purchasing and selling municipal agency securities would cause significant harm to liquidity in the municipal market, increasing borrowing costs for municipal issuers. Banks have traditionally provided a fundamental source of liquidity for all municipal securities due to the significant fragmentation of the municipal market as compared to other securities markets. In a market with widely varying CUSIPs and lot sizes, banks have traditionally smoothed the inevitable gaps between sellers and buyers by holding positions for their own account. Market liquidity will inevitably suffer if banks are prohibited from engaging in this basic market-making activity.

We urge the Agencies to expand the exemption for proprietary trading in government obligations to include agencies of States and their political subdivisions.

Municipal TOB Programs

We are also concerned by the potential impact of the Proposed Rule's limitations on "Covered Fund Activities and Investments" on the municipal tender-option bond ("TOB") programs. We urge the Agencies to permit banks to sponsor, invest in, and provide liquidity facilities to such municipal TOB programs.

An active TOB market serves to stimulate demand for long-term municipal bonds and thereby decreases issuer borrowing costs. The TOB structure serves two constituents. First, for long-term institutional investors, such as banks and mutual funds, it provides a source of cost-efficient financing that is the economic equivalent of a repurchase agreement ("repo"). Second, it provides a mechanism for short-term investors, primarily tax-exempt money market funds, to invest in long-term municipal debt. We are concerned that the Proposed Rule would capture TOBs as "covered funds," which, in all likelihood, would eliminate the TOB market.

A TOB transaction is created by depositing one or more municipal securities, typically fixed-rate, into a partnership trust that issues two classes of beneficial interests. The trust does not introduce credit tranching but merely splits the cash flows from the underlying municipal securities into a "floater" and a "residual." The floater bears interest at a variable rate, usually with a weekly reset, and entitles the investor to tender their shares under most circumstances at par to the trust. A bank provides a liquidity facility in order to support the floater holder's tender right. The residual holder earns the difference between the underlying municipal bond yield and the rate paid on the floaters. The residual is typically held by a bank, mutual fund, or other institutional investor that purchases longer-duration securities. The demand for the floaters enables the residual holder to achieve a cost-efficient borrowing source.

Unlike repo, its economic equivalent, the TOB is created through a unique trust structure in order to preserve the tax-exempt nature of the cash flow as it passes through from the underlying municipal securities to the floaters. The traditional repo structure is generally not utilized to finance municipal bonds, because the borrowing rate is taxable, and thus generally higher than the borrowing rate achievable through the TOB. The unique TOB trust structure is predicated on utilizing an exemption from the Investment Company Act under Section 3(c)1 or 3(c)7. However, while it shares the same Investment Company Act exemption, the TOB should not be included in any definition of a hedge fund or private equity fund. The TOB does not involve credit tranching or taking positions in speculative investments. Furthermore, investors in TOBs, the floater and residual holders, have full transparency as to the specific bonds held by the trust.

For these reasons, we urge the Agencies to expressly permit banks to sponsor, invest in, and provide liquidity facilities to TOBs.

Compliance

State Street is concerned that the threshold established for the most complex compliance requirements --- over $5 billion in combined trading assets and liabilities --- is too low, and applies a "one-size-fits-all" approach to firms with dramatically different trading activities and risk profiles. The Proposed Rule, for example, would apply the same compliance regime to firms, such as State Street, which incrementally exceed the $5 billion threshold as those with combined trading assets and liabilities exceeding $500 billion. In addition, the Proposed Rule's approach does not distinguish between firms with fairly narrow trading businesses (*e.g.*, for State Street, trading is largely in a single instrument type, foreign exchange), and those with broad ranging trading businesses, covering a broad range of instruments.

We suggest the Agencies increase the threshold for the highest compliance requirement to $50 billion in combined trading assets and liabilities, perhaps combined with an additional trigger based on the ratio of trading assets/liabilities to total assets. Such an approach would apply the higher compliance requirements to firms with either substantial gross trading activity, or with business models concentrated in trading. In addition, we suggest the Agencies permit firms with narrowly focused lines of trading businesses tailor the quantitative compliance requirements according to the specific types of instruments traded. For example, as noted above, we believe a far simpler approach could be adopted to demonstrate "market-making" activity in foreign exchange.

Effective Date and Rulemaking Process

Given the lack of transition time between a possible final rule and the July 21, 2012 statutory effective date, the considerable uncertainty regarding the likely content of a final rule, and significant complexity of the Volcker Rule, State Street strongly urges the Agencies to publicly acknowledge, as soon as possible, that banking entities will be provided sufficient time to come into compliance with a final rule.

We are particularly concerned by the suggestion in the Proposed Rule that banks might be expected to have compliance programs, both proprietary trading and covered fund related, by the July statutory deadline. These programs will require substantial investment by banking entities, particularly those seeking to continue to function as market makers. Given the number of questions raised by the Proposed Rule, it is unreasonable to expect banks to fully develop these programs before a final rule is issued, and, given the timing of the Proposed Rule, unlikely that banks could do so between issuance of a final rule later this year and July 21.

We are also concerned that there is sufficient ambiguity in the statutory language to suggest that the "Super 23A" restrictions may be expected to apply by the statutory deadline. While, as noted above, we hope the Agencies will provide an exception from "Super 23A" for securities settlement-related provisional credit and other custodial activities. If such an exception is not provided, shifting custody arrangements to eliminate such custody-related exposures will, for all practical purposes, be impossible to achieve by July 21.

We believe the Agencies have sufficient flexibility under the Dodd-Frank Act to delay the effectiveness of all of these requirements through the statutory conformance periods, and we urge the Agencies to adopt such an approach. To reduce the current uncertainty on this issue, we urge the Agencies to announce their intention to provide reasonable compliance transition periods as soon as possible, well before the publication of a final rule.

In addition, given the complexity of the Proposed Rule, the number of questions posted by the Agencies, and the expected substantial public input, we request that the Agencies repropose the rule, and provide for additional public comment before adopting a final rule.

In conclusion, once again, State Street appreciates the opportunity to comment on this important rulemaking. We hope the Agencies will accept the suggested changes outlined above, which we believe will result in a more effective, administerable final rule. Please feel free to contact me with any questions.

Sincerely,

Stefan M. Gavell

cc: Mary Miller, Assistant Secretary for Financial Markets, Department of the Treasury