February 13, 2012

Ladies and Gentlemen:

This Firm appreciates the opportunity to comment on the joint notice of proposed rulemaking 1 implementing Section 619 of the Dodd-Frank Wall Street

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1 76 Fed. Reg. 68,846 (Nov. 7, 2011) (the "Proposal"). In this letter, we refer to the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission (the "CFTC") collectively as the "Agencies", the text of the proposed rules as the "Proposed Rule", and the final regulations the Agencies plan to issue to implement the Volcker Rule as the "Final Rule". We
Reform and Consumer Protection Act ("Dodd-Frank"), commonly known as the "Volcker Rule". The purpose of this comment letter is to alert the Agencies to an unintended consequence under the Proposed Rule that, if not addressed in the Final Rule, could effectively prohibit a bank holding company from retaining an ownership interest in another bank holding company in certain circumstances.

The Volcker Rule, among other things, generally prohibits a banking entity, including a bank holding company, from sponsoring, or acquiring or retaining an ownership interest in, a "private equity fund" or a "hedge fund" ("covered funds"), subject to certain exemptions. The Proposed Rule implements this prohibition at §__.10(a), which provides that "a covered banking entity may not, as principal, directly or indirectly, acquire or retain any ownership interest in or sponsor a covered fund[,]" unless an exemption is available. The primary exemption is an eight-factor "permitted funds" exemption. There is also an exemption that allows a banking entity to own certain specified types of entities, including joint venture operating companies, acquisition vehicles, and wholly-owned liquidity management subsidiaries carried on the balance sheet of the banking entity.

This general prohibition could have unfortunate and, we believe, unintended consequences for any bank holding company that holds an interest in another bank holding company that meets the definition of a "covered fund." Specifically, under the Proposed Rule, a bank holding company would be prohibited

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3 BHC Act § 13(a)(1).

4 Proposed Rule at §__.10(a).

5 Proposed Rule at §__.11(a)-(h). There are other exemptions, including for risk-mitigating hedging activities, certain non-U.S. activities conducted by non-U.S. banking entities, and loan securitization vehicles. Proposed Rule at §__.13.

6 Proposed Rule at §__.14(a)(2).

7 Under the Proposed Rule, a "covered fund" is defined to include any issuer that relies on the section 3(c)(1) or 3(c)(7) exclusions from the definition of investment company under the Investment Company Act of 1940, a commodity pool, certain foreign equivalents, and any similar funds as may be determined by the Agencies. Proposed Rule at §__.10(b)(1).
from retaining an ownership interest in any bank holding company to the extent that
the other bank holding company was a "covered fund," unless an exemption was
available. The Proposed Rule does not contain an exemption that would expressly
authorize a bank holding company to hold such an interest in another bank holding
company.

We do not believe that the Congress intended for the Volcker Rule to
prohibit an investment by a bank holding company in another bank holding
company, even in cases where the other bank holding company might otherwise be
treated as a "covered fund". If such a prohibition were allowed to apply to these
kinds of investments, it would result in bank holding companies being required to
alter their corporate and organizational structures without, in our view, achieving any
reduction in risk. Moreover, bank holding company investments in other bank
holding companies do not in our view raise the type of concerns which the Volcker
Rule was intended to address.

Section 619(d)(1)(J) of Dodd-Frank grants the Agencies broad
authority to authorize certain activities that might otherwise be prohibited by the
Volcker Rule to the extent that such activities promote and protect the safety and
soundness of a banking entity and the financial stability of the United States. We
respectfully request that the Agencies rely on this authority to include in the Final
Rule a provision that would expressly exempt from the general prohibition at §
10(a) investments made by a banking entity in a bank holding company.

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8 The Proposed Rule would also prohibit a bank holding company from forming a subsidiary bank
holding company in the context of a corporate reorganization if the subsidiary bank holding
company met the definition of a "covered fund," absent an exemption. Under the Federal
Reserve's Regulation Y, such formations are generally authorized without prior approval of the
Federal Reserve provided certain conditions are met.

9 Moreover, the "permitted funds" exemption could not be relied upon as a practical matter because
its restrictions on the banking entity's ability to support the covered fund would limit the extent to
which a parent bank holding company could serve as a source of strength to a lower tier bank
subsidiary.

To implement such an exemption, we would recommend that the Agencies consider including in the Final Rule a new subsection (vi) at § __.14(a)(2), as follows:

§ __.14 Covered fund activities determined to be permissible.

(a) The prohibition contained in § __.10(a) does not apply to the acquisition or retention by a covered banking entity of any ownership interest in or acting as sponsor to:

...

(2) Certain other covered funds. Any of the following entities that would otherwise qualify as a covered fund:

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We appreciate your consideration of our comment on the Proposed Rule. Please contact me or John Court (202-371-7048) if we can answer any questions or provide any additional information.

Very truly yours,

William J. Sweet, Jr.