



February 13, 2012

By Electronic Mail

Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, 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

Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

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

Re: Joint Notice of Proposed Rulemaking Implementing the Volcker Rule: Federal Reserve Docket No. R-1432 and RIN 7100 AD 82; OCC Docket ID OCC-2011-14; FDIC RIN 3064-AD85; SEC File No. S7-41-11; CFTC RIN 3038-AC

Ladies and Gentlemen:

Mitsubishi UFJ Financial Group, Inc. (“MUFJ”) appreciates the opportunity to comment on the joint notice of proposed rulemaking (the “*Proposed Rules*”) implementing Section 619 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the “*Dodd Frank Act*”), commonly known as the “Volcker Rule.”

We are limiting our comments in this individual letter to the application of the Volcker Rule to foreign broker-dealer subsidiaries of qualifying foreign banking organizations that are consolidated in the financial statements of the foreign banking organization but in which a U.S. banking entity owns a minority interest that would be deemed to be “controlling” under the Bank Holding Company Act of 1956 (the “*BHC Act*”). We join in the comment letters submitted by the Japanese Bankers Association and the Institute for International Bankers and therefore do not repeat here the various matters discussed in those letters.

*Subsidiaries of Foreign Banking Organizations in Which a U.S. Banking Entity Invests*

The Volcker Rule provides exceptions for (i) proprietary trading by a banking entity pursuant to Sections (4)(c)(9) or (13) of the BHC Act if such activities are conducted solely outside the United States and the banking entity is not controlled by a U.S. banking entity and (ii) investment in or sponsorship of covered funds by a banking

entity pursuant to Sections (4)(c)(9) or (13) of the BHC Act if such activities are conducted solely outside the United States, the banking entity is not controlled by a U.S. banking entity and no ownership interest in such fund is offered for sale or sold to a resident of the United States (the “*SOTUS exemptions*”).

Such exemptions are appropriate to ensure that the Volcker Rule does not violate traditional principles of comity and to limit, in an appropriate manner, the extraterritorial application of U.S. laws. MUFG is concerned, however, that the Proposed Rules have been drafted in a way that would take away the SOTUS exemptions from a foreign subsidiary of a qualifying foreign banking organization if a U.S. banking entity has a minority but “controlling” interest (for purposes of the BHC Act) in such subsidiary, even when the qualifying foreign banking organization is the majority shareholder, consolidates the subsidiary and is the actual control person of the subsidiary (such a foreign company a “*Foreign-Controlled Broker-Dealer*”).

This issue directly affects MUFG because it has a Japanese securities subsidiary, Mitsubishi UFJ Morgan Stanley Securities Co., Ltd. (“*MUMSS*”), through which it conducts its investment banking and wholesale and retail securities businesses in Japan, that is partially owned by a U.S. bank holding company. MUFG owns a 60% economic interest and holds a 60% voting interest in MUMSS, while the U.S. bank holding company owns a 40% economic interest and holds a 40% voting interest in MUMSS.<sup>1</sup>

As a consequence, under the Proposed Rules, a Foreign-Controlled Broker-Dealer, despite being a consolidated subsidiary of, and subject to actual control by, a qualifying foreign banking organization, would be subject to the Volcker Rule’s prohibitions on proprietary trading and investment in and sponsorship of covered funds, its recordkeeping and reporting requirements and its compliance program requirements as if it were a domestic U.S. company. MUFG does not object to appropriate U.S. regulation and supervision of Foreign-Controlled Broker-Dealers. We submit, however, that it is inappropriate for the operations of a foreign company that is a consolidated subsidiary of a qualifying foreign banking organization to be subjected to a U.S. regulatory regime as broad in its effect as the Volcker Rule as if the subsidiary were controlled only by a domestic U.S. bank holding company.

Unless the revision we are requesting is made to the Proposed Rules, a Foreign-Controlled Broker-Dealer would be at a competitive disadvantage to other

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<sup>1</sup> MUFG notes that it is not proposing that the SOTUS exemptions be revised to apply to entities such as the U.S. bank holding company’s Japanese securities subsidiary, in which MUFG has a 60% economic interest and 49% voting interest but which is a consolidated subsidiary of, and controlled by, the U.S. bank holding company.

broker-dealers in the relevant foreign country, including even broker-dealers that are subject to the Volcker Rule solely as a result of being controlled by a foreign banking organization. We believe that such a result would be fundamentally unfair and contrary to Congress' goal of avoiding extraterritorial effects.

It would also have severe adverse consequences for MUFG and its subsidiary, MUMSS. MUMSS' most significant competitors in Japan are Nomura Securities, Daiwa Securities, SMBC Nikko Securities and Mizuho Securities. These firms are either not subject to the Volcker Rule at all or can take full advantage of the SOTUS exemptions. By contrast, MUMSS would be subject to substantive restrictions on the conduct of its business in Japan, to the requirement to develop an extensive and burdensome compliance program and to extensive record-keeping and reporting requirements. Each of these effects will hurt MUMSS' ability to compete in its home market.

One consequence of the unavailability of the SOTUS exemptions to a Foreign-Controlled Broker-Dealer would be the requirement that the broker-dealer comply with the Proposed Rules' compliance program standards and record keeping and reporting requirements. Though the Proposed Rules lessen the regulatory burden for U.S. banking entities by permitting the use of enterprise-wide compliance programs to cover a banking entity and its subsidiaries and other affiliates, such a concession is less helpful for the foreign subsidiary of a qualifying foreign banking organization when a U.S. banking entity has a "controlling" stake. As a practical matter, it is unlikely that a foreign company that is a consolidated subsidiary of a qualifying foreign banking organization could be part of a enterprise-wide compliance program of its U.S. minority shareholder, given that such a foreign company would not truly be part of the U.S. banking entity's enterprise. Conversely, if the foreign company were required to create and implement its own U.S. domestic entity-equivalent compliance program, the regulatory burden would be that much greater, putting it at a further competitive disadvantage.

For these reasons, MUFG submits that, for purposes of the Volcker Rule, a banking entity that is a consolidated, majority-owned subsidiary of a qualifying foreign banking organization not be deemed to be "controlled" by a minority investor in the subsidiary.<sup>2</sup>

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<sup>2</sup> We note that the Federal Reserve has been willing to consider alternative definitions of "control" as circumstances warrant. *See* 77 Fed. Reg. 594, 614 (Jan. 5, 2012) (proposed regulations implementing the single-counterparty credit limits of Section 165 of the Dodd-Frank Act); 12 C.F.R. 208, App. F, §2 (definition of "control" in capital adequacy guidelines; internal-ratings-based and advanced measurement approaches); 12 C.F.R. 225, App. G, §2 (same).

*Treatment of Japanese Government Bonds*

As was previously stated, MUFG joins in comments made regarding the Proposed Rules by the Japanese Bankers Association and the Institute for International Bankers. One of those comments is that the Agencies should use their authority under Section 13(d)(1)(J) of the BHC Act to exempt from the Volcker Rule's restrictions on proprietary trading in the sovereign debt of selected foreign countries, including Japan. MUFG agrees with this comment and believes that all banking entities should be permitted to trade in Japanese Government Bonds ("JGBs") to the same extent as U.S. government securities. Such an exception is appropriate to ensure the liquidity of the market for JGBs, would not create any risk to the safety and soundness of banking entities and would promote financial stability. Such an additional exemption would not, however, solve the more general problem of the unavailability of the SOTUS exemptions to Foreign-Controlled Broker-Dealers. For example, trading in financial instruments other than JGBs is responsible for a much larger portion of MUMSS' revenue than is trading in JGBs and is crucial to MUMSS' ability to sustain its business in Japan.

*Compliance Program Standards and Record Keeping and Reporting Requirements*

If the Proposed Rules are not modified in the manner proposed, MUFG submits that Foreign-Controlled Broker-Dealers should be subjected to less stringent, more proportionate compliance program standards and record keeping and reporting requirements. If such a foreign company were deemed itself to have a "significant" amount of covered activities, it would not only be subject to the Volcker Rule at a baseline level but could also be required to adhere to the most stringent compliance program and record keeping and reporting requirements as set forth in Appendices A and C of the Proposed Rules. But because a U.S. banking entity's participation in the Foreign-Controlled Broker-Dealer is limited, imposing such requirements would be out of proportion to the potential impact of covered activities on the U.S. banking entity.

As to the specifics of the record keeping and reporting requirements, MUFG notes the Agencies' statement in the release accompanying the Proposed Rules that they intend to use the Volcker Rule's two-year conformance period to review any data collected during this time and evaluate whether adjustments should be made to these requirements.<sup>3</sup> MUFG appreciates the practicality of this "heuristic" approach but is concerned that it cannot alleviate the burden that would be imposed on Foreign-Controlled Broker-Dealers if they must comply with the same requirements as U.S. broker-dealers. If the Agencies do not accept our request that Foreign-Controlled Broker-Dealers not be subject to U.S. requirements, we urge that the Agencies pay particular attention to the specific nature of foreign markets and business practices and

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<sup>3</sup> 76 Fed. Reg. 68846 at 68883.

only devise requirements for Foreign-Controlled Broker-Dealers after they have gained experience with applying these requirements to U.S. broker-dealers.

*Possible Implications for Foreign Investments by U.S. Banking Entities*

We note that if the Proposed Rules are adopted without change, qualifying foreign banking organizations may be unwilling to accept investments from U.S. banking entities if those investments would make the foreign banking organization's subsidiary subject to the Volcker Rule as a result of being "controlled" by the U.S. banking entity under the BHC Act. If this is the case, U.S. banking entities would be unable to make investments exceeding 25% (or even lower if such investment is deemed to be a "controlling" investment for purposes of the BHC Act). This limitation may make it impossible for U.S. banking entities to pursue the sort of investments and related legal and contractual arrangements that best allocate the operational control, risk management and financial interests between foreign banking organizations and U.S. banking institutions.

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We appreciate your consideration of our comments on the Proposed Rules. Please contact Robert E. Hand, General Counsel, Mitsubishi UFJ Financial Group, Inc., Corporate Governance Division for the United States at (212) 782-4630 (e-mail: rhand@us.mufg.jp) or Donald J. Toumey of Sullivan & Cromwell LLP at (212) 558-7281 (e-mail: toumeyd@sullcrom.com) with any questions about our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nobuyuki Hirano', written over a horizontal line.

Nobuyuki Hirano  
Deputy President  
Mitsubishi UFJ Financial Group, Inc.