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February 13, 2012

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket ID OCc-2011-14; RIN1557-AD44

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary
Docket No. R-1432; RIN 7100-AD82

Federal Deposit Insurance Corporation
550 17th Street, NW.,
Washington, DC 20429
Attn: Comments
Robert E. Feldman, Executive Secretary
RIN no. 3064-AD85

Securities and Exchange Commission
100F Street, NE.,
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary
Release No. 34-65545; File No. S&-41-11; RIN 3235-AL07

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

Dear Ms. Murphy:

The TCW Group, Inc. (the "**Firm**") respectfully submits this letter in response to the request for comments on the joint rulemaking proposal (the "**Proposal**") of the respective agencies above (the "**Agencies**") to implement Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds (the "**Volcker Rule**").

The TCW Group of companies has been engaged in the investment management business since 1971. Companies in the Firm provide investment management services primarily to mutual funds and other registered investment companies, to private investment funds and to institutional and high net worth investors. The Firm had approximately $118 billion of assets under management or committed to management as of December 31, 2011. The Firm is a subsidiary of a foreign bank holding company.

The Firm's comments address the covered funds provisions of the Volcker Rule and the Proposal.

Specifically, the Firm requests for consideration that the Agencies:

1. Exempt from the definition of a "commodity pool" that constitutes a "covered fund" an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.
2. Exempt from the definition of a "covered fund" foreign funds that are publicly offered outside of the U.S. and are subject to a regulatory regime in their home jurisdiction.
3. Exempt a performance fee or allocation calculated on fund income and gain from the definition of an "ownership interest".
4. Amend the definition of "carried interest" eligible for exclusion from "ownership interest" (i) to provide that the purpose and effect of the award of a "carried interest" is to be judged at the time the interest is created ; (ii) to permit a small amount of capital to be paid to the "covered fund" for the "carried interest" to preserve tax treatment of the interest; and (iii) to permit transfers of "carried interests" among employees, to family members of employees, to estate planning vehicles and upon the death of an employee.
5. Clarify that a covered banking entity is not a "sponsor" of a private fund if its main role is primarily limited to asset management.
6. Permit a "covered fund" to use the name or a variation of the name of a covered banking entity that does not contain or reference the name of an insured depository institution or the direct or indirect parent of an insured depository institution.
7. Permit an exemption to the restrictions on "covered funds" to allow a covered banking entity to establish an entity to incubate a new investment strategy for its investment management business prior to offering.
8. In connection with "certain permitted covered fund activities and investments outside of the United States", permit activity in connection with the offer or sale of a foreign fund in the U.S. with respect to investors that are not U.S. residents in a manner consistent with Regulation S.

We discuss each of these requests below, including, where appropriate, specific changes that we request the Agencies to consider.

I. Definitions

Exempt an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 from the definition of a "commodity pool". [Subpart C, Section __.10(b)(ii) of the Proposal]

Under the expansive definition of the Proposal, covered banking entities that are advisers to registered investment companies, although likely unintended, could be subject to the limitations of the Volcker Rule for any series of a mutual fund that may also be a "commodity pool". However, mutual funds are already subject to an extensive regulatory scheme that, among other things, contains substantive limitations on leverage, uncovered shorts, and illiquid investments that effectively prevent the funds from operating as hedge funds or private equity funds. In addition, there is little evidence that mutual funds, which are clearly investment vehicles that are distinct from any covered banking entity that may be its advisor, represent a significant risk to the safety and soundness of related banking entities, to financial stability or with respect to the other considerations that led to enactment of the Volcker Rule.

Exempt foreign funds such as UCITS that are publicly offered outside of the U.S. and subject to a regulatory regime in their home jurisdiction from the definition of "covered fund". [Subpart C, Section __.10(b)(iii) of the Proposal]

This expansion of the definition of "covered funds" to include foreign funds lacks clarity and could be read to subject almost any foreign fund a covered banking entity may advise, public or private, regulated or not, to the Volcker Rule limitations. Foreign funds that are offered to the public outside of the U.S. and regulated in their home jurisdiction, such as an Undertaking for Collective Investment in Transferable Securities ("UCITS"), should be given the same treatment as U.S. registered investment companies and exempt from the definition of "covered fund".

Exempt a performance fee or allocation paid to an investment manager that is calculated by taking into account income and realized and/or unrealized gain from the definition of an "ownership interest". [Subpart C, Section __.10(b)(3)(ii)]

These performance fees or allocations should be exempt from the definition of "ownership interest" because they represent a substantially similar incentive to "carried interests", which will be exempt under the Proposal, in aligning the investment manager's interest with those of a fund. Payment of these fees and allocations are typically independent of any equity ownership interest that the investment manager, its affiliates or its employees may have in the fund. This comment is also responsive to Question 223 in the Supplementary Information of the Release that accompanied the Proposal.

Clarify that the purpose and effect of an award of a "carried interest" is to be judged at the time the interest is created and not reevaluated at a subsequent time. [Subpart C, Section __.10(b)(3)(ii)(A)(1)]

The role of a recipient of "carried interest" for a fund may change over time. Employees awarded "carried interest" may, for example, change duties within the covered banking entity or leave its employment but may nevertheless be entitled to all or a portion of the "carried interest". This change of circumstances should not cause the "carried interest" to be re-classified as an "ownership interest".

Permit a covered banking entity, or its affiliate, subsidiary or employee, to provide a small amount of capital (typically less than 1%) to the covered fund in connection with acquiring or retaining a "carried interest" in order to preserve the appropriate tax treatment of the "carried interest" under tax law.[Subpart C, Section __.10(b)(3)(ii)(A)(3)]

Many tax advisers recommend a limited contribution by a party that will receive a "carried interest" in a fund to preserve appropriate characterization under tax law. Any such contribution, when made by the covered banking entity or its affiliate or subsidiary, should count toward the 3% investment limits, but should not cause the "carried interest" to be re-characterized as an "ownership interest".

Permit transfers to another employee or employee's family member, a trust or other estate planning vehicle of an employee, or as directed by the estate, trust or other estate planning vehicle in the event of the death of the employee without triggering re-characterization of a "carried interest" to an ownership interest.[Subpart C, Section __.10(b)(3)(ii)(A)(4)]

This amendment would make clear that commonly permitted transfers among employees, employee family members, involving estate planning vehicles, or involving transfers upon the death of an employee will not cause the "carried interest" to be re-characterized as an "ownership interest".

Clarify that a covered banking entity is not a "sponsor" of a private fund where the banking entity's main role is primarily limited to acting as the investment manager for the fund. [Subpart C, Section __.10(b)(5]).

Investment advisers are often engaged to manage the investments of a private fund established by an unaffiliated third party who is the actual promoter of the fund. For many of these funds, the third party promoter leads the marketing of the fund, primarily to its own clients, and an entity unaffiliated with the investment manager is the general partner or equivalent of the fund or there is a board of directors not controlled by the investment manager. In these instances, the investment manager is not responsible for the operations or the books and records of the fund, and generally does not perform any other significant function for the fund, such as acting as transfer agent. For example, actively managed CDO's have typically been raised, structured and promoted by investment banks. Covered banking entities that are unaffiliated

with the investment banks often act as the investment manager for the CDO's. The definition of "sponsor" should be clarified to indicate that the investment manager is not a sponsor of funds such as these, where its main role is to provide investment advice or decisions. This comment is also responsive to Question 219 and 220 in the Supplementary Information of the Release that accompanied the Proposal.

II. Permitted activities

Permit a covered fund to use of the name or a variation of the name of a covered banking entity that is not also the name or a variation of the name of an insured depository institution or the direct or indirect parent of an insured depository institution. [Amend Subpart C, Section __,11(f)(1)]

Modern bank holding companies are comprised of a number of businesses, some of which have established distinct trade names that are corporate brands which are independent of the banking businesses and the names of the parent bank holding company or its insured depository institution subsidiaries. Indeed, these names are often different for the very purpose of not having the non-banking subsidiary confused with the real banking entities and to make clear to clients and investors that the non-banking entity operates in a regimen distinct from the banking regimen. Covered banking entities should be permitted to continue to use those brand names in connection with covered funds they are permitted to organize and manage. We do not believe that investors in a covered fund with an SEC-registered investment adviser that has a name totally unrelated to the insured depository company's name would be misled to believe that the fund would be backed in any way by a related insured depository institution.

Permit a covered banking entity to establish a legal entity for which it provides seed money for a period up to 3 years as part of a bona fide effort to incubate a new investment strategy or new investment managers for the covered banking entity's investment management business.

Registered investment advisers routinely establish legal entities and provide them with money for investment in a new investment strategy or with new investment managers ("**seed strategies**"). This is done in order to establish a track record to market to potential future investors in those strategies. Generally, the marketplace requires a track record of up to 3 years before investing. Investment management firms must be able to develop these track records for seed strategies to remain competitive with other firms. The requirement of Subpart C, Section __.12(a)(2)(i)(A) that any covered fund must actively seek to reduce to 3% the amount of proprietary investment within one year after the fund is established, could impair the ability of firms that are part of a banking group to develop seed strategies in this time-tested and market-required manner. While an adviser could seek extensions of time for covered funds for up to two one-year periods pursuant to Subpart C, Section __.12(e), that alternative is likely insufficient, both because of the uncertainty of approval and because it would leave the adviser with no authority to provide necessary money to a covered fund during the period it is actually first offered to third parties. We recommend that the proposal

be amended to provide that a legal entity as part of a bona fide plan to establish a seed strategy for a period up to 3 years in which the strategy will not be offered to a third party through a covered fund, will be exempt from the restrictions of Subpart B, Section __3, and Subpart C, Section __.12(a)(2)(i)(A).

Permit activity in connection with the offer or sale of a foreign covered fund in the U.S. as long as none of the activity involves an offer of or the sale of an ownership interest to a resident of the U.S. [Amend Subpart C, Section __.13(c)(iv)]

The prohibition on activity in the U.S. with respect to a foreign fund that otherwise meets the terms of this exemption is not a requirement of the Volcker Rule and should not be added. U.S.-based investment managers or broker-dealers may have foreign clients that are not U.S. residents. If the offering activities of the U.S.-based managers or brokers otherwise meet the requirements of Regulation S, these funds should not be disqualified from this exemption solely because U.S. persons are involved in the activity. There is no benefit from prohibiting this activity in the U.S. on behalf of these foreign investors, which will have the effect of driving clients to take their business to advisers and brokers outside of the U.S.

We appreciate the consideration by the Agencies of our comments on the Proposal. Please do not hesitate to contact the undersigned at (213) 244-0648 (Michael.Cahill@tcw.com) or Sean Plater, Associate General Counsel at (213) 244-0652 (Sean.Plater@tcw.com) if you would like us to provide any additional information regarding our comments or other matters.

Respectfully submitted,

Michael E. Cahill
General Counsel

Sean Plater
Associate General Counsel