February 13, 2012

By Electronic Submission

Office of the Comptroller of the Currency
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Docket ID OCC-2011-14

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

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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
File Number S7-41-11

RE: Request for Public Comment on Notice of Proposed Rulemaking Implementing the Provisions of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Concerning Restrictions on Proprietary Trading and Certain Interests in and Relationships with, Hedge Funds and Private Equity Funds

I. Financial stability is a dynamic concept.

Many have written to address Section (d)(1)(J)'s exemption allowing "a banking entity to engage in any covered fund activity or investment that the Agencies determine promotes or protects the safety and soundness of banking entities and the financial stability of the United States." However the phrase "protect and promote the financial stability of the United States" has not been defined in the statute or by regulators. As this phrase has no prescribed meaning we write today to express our belief on how that phrase should be interpreted based on analogous positions the U.S. government has advocated in both domestic and international forums. [1]

The Federal Reserve has written that it takes both restrictive and permissive actions to ensure the financial stability of the United States.[2] It is with the spirit of this guidance--not only to limit

[1] While there are obviously many types of activities engaged in by banks that promote or protect the financial stability of the United States, we are writing on behalf of a bank engaged in venture capital activities, and accordingly we limit our comments to such activities.
[2] The Federal Reserve Board, *The Federal Reserve System: Purposes & Functions*, Aug. 2011 at 59-70.

certain activities, but to promote others--that the Volcker Rule's (d)(1)(J) exemption should be approached. We believe understanding what activities promote and protect the financial stability of the United States requires an understanding of the challenges facing the U.S. economy. Our analysis of the statements by the U.S. government, both domestically and internationally, makes clear that the major challenge to U.S. financial stability is a lack of sustained economic growth and job creation.

Other provisions of Dodd-Frank have addressed the issues of systemic risk, high leverage ratios, and the taking of short-term positions that became a concern to the government after the financial crisis of 2008. The regulation of these concerns is not an open issue. Focusing only on previous causes of financial instability, however, will not promote and protect the financial stability of the United States going forward. We believe (d)(1)(J) is not aimed at addressing the possible causes of financial instability already covered in other elements of the Dodd-Frank legislation, but is instead aimed at looking forward to allow the activities that promote the financial stability of the United States. We believe (d)(1)(J) should be interpreted in this forward-looking manner to allow activities, such as venture capital investment, that promote steady economic growth and job creation.

II. Promotion and protection of the financial stability of the United States requires allowing activities that promote steady economic growth and create jobs.

Financial stability is dependent on economic growth. Erik Rosengren, the CEO of the Federal Reserve Bank of Boston, has offered this view: "Financial stability reflects the ability of the financial system to consistently supply the credit intermediation and payment services that are needed in the real economy if it is to continue on its growth path."[3] This focus on keeping the economy growing captures the essential element of the current efforts to promote and protect the financial stability of the United States. Statements of the U.S. government support this understanding of financial stability as being centered on real economic growth and job creation.

In domestic forums, the U.S. government has stressed the need for real economic growth and job creation as the centerpiece of promoting and protecting financial stability. In a recent speech before Congress, President Obama stated "[w]e have to look beyond the immediate crisis and start building an economy that lasts into the future — an economy that creates good, middle-class jobs that pay well and offer security. We now live in a world where technology has made it possible for companies to take their business anywhere. If we want them to start here and stay here and hire here, we have to be able to out-build and out-educate and out-innovate every other country on Earth."[4] Secretary Geithner reinforced this position when he told Congress

[3] Eric S. Rosengren, Keynote Remarks at the Stanford Finance Forum Graduate School of Business: Defining Financial Stability and Some Policy Implications of Applying the Definition (June 3, 2011).
[4] President Barack Obama, Speech to Congress (Sep. 8, 2011).

"[c]reating stronger economic growth and helping more Americans get back to work is today's biggest challenge. We have succeeded in preventing the collapse of the financial system, restarting economic growth, and creating 2.6 million private sector jobs; however, economic growth remains slow and significant economic challenges remain."[5] The country's economic leadership has made clear that real economic growth and job creation are the lynchpins of financial stability for the United States.

In international economic forums the United States has reinforced its position that economic growth and job creation are the keys to financial stability. This focus has been present since the early days of the recent financial crisis. In November 2008, a Bush administration economic official stated "a broad agreement on the importance of the countries of the G20 taking and implementing pro-growth investment -- pro-growth policies to stimulate our economies" was the first priority of the administration.[6] The Obama administration has continued this emphasis on real economic growth and job creation. In a preview of the 2011 Cannes G20 Summit, a White House representative stated "President Obama remains intensely focused on putting Americans back to work. Recovery in the U.S. remains fragile and still too vulnerable to disruption beyond our shores. Pro-growth policies in the near term and meaningful deficit reduction in the medium term provide the best insurance policy to protect the U.S. recovery from global risks."[7] The President explicitly linked real economic growth to the financial stability of the United States in this statement. The commitments the United States has expressed to the international community should be considered in the interpretation of domestic legislation, particularly when interpreting an undefined phrase such as "financial stability." In this case an emphasis on the promotion of pro-growth and job creation policies is essential to implementing the Volcker Rule in a manner consistent with the statements the United States has made domestically and to the international community.

The U.S. support of G20 plans for financial stability also provides evidence that real economic growth and job creation are the current focus of efforts to achieve financial stability not only in the U.S. but worldwide. In London in 2009 the G20 leaders cited the need "to restore confidence, growth, and jobs" as the first priority in "bring[ing] the world economy out of recession and prevent[ing] a crisis like this from recurring in the future."[8] In 2010 the G20 stated "[t]he recent events highlight the importance of sustainable public finances and the need for our countries to put in place credible, growth-friendly measures, to deliver fiscal sustainability, differentiated for and tailored to national circumstances."[9] Continuing the drive to promote financial stability through growth and job creation, in 2011 the G20 stated "[w]e are committed

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[5] *Hearing Before the S. Comm. On Small Bus. and Entrepreneurship*, 112th Cong. (2011) (statement of Timothy Geithner, Secretary of the Treasury).
[6] Press Conference, Executive Office of the President (Nov. 15, 2008).
[7] Press Conference, Executive Office of the President (Oct. 31, 2011).
[8] G20, Global Plan for Recovery and Reform Issued by the G20 Leaders, London, (April 2, 2009).
[9] G20, *Communique of the G20 Finance Ministers and Central Bank Governors*, Busan (June 5, 2010).

to supporting growth, implementing credible fiscal consolidation plans, and ensuring strong, sustainable and balanced growth."[10]

Real economic growth and job creation also produce other beneficial impacts on the economy. High debt levels pose a threat to financial stability. The IMF has recently written that "government debt is generally high and on a worrying upward path" and is on "problematic trajectory" in the United States.[11] A cause of this debt is the decline in tax revenue associated with less economic growth.[12] An increase in economic growth will increase tax revenues and help alleviate the debt burden. Increased economic growth will also increase home ownership. The construction of new homes led to the economy "benefit[ing] from the jobs, local taxes, and spending which new homes create and which our economy desperately needs."[13] All of these tools to increase the financial stability of the United States are rooted in promoting policies that encourage real economic growth and job creation.

Additionally, the U.S. government has shown an awareness that regulation must be tempered to avoid impeding growth. The U.S. Treasury has written it "believes it must ensure that the U.S. regulatory structure does not inhibit the continued growth and stability of the U.S. financial services industry and the economy as a whole."[14] The Financial Stability Oversight Council has also recently written that "[t]he challenge of maintaining a stable financial system is exacerbated by the difficulty of balancing the benefits of regulation against the costs of excessively restraining prudent risk-taking behavior. If we were to set the overall combination of margin, liquidity, and capital requirements too high, we could handicap the ability of the financial system to support economic growth. Further, financial activity would inevitably move more quickly to firms, markets, and countries where the intensity of regulation is weaker. So we need to continue to strive for a careful balance between the imperatives of creating a more stable system and promoting a level of innovation and dynamism."[15] Recently commenting on the report of his Jobs and Competitiveness Council, the President stated "[o]ur job is to do everything we can to ensure that businesses can take root and folks can find good jobs and America is leading the global competition that will determine our success in the 21st century."[16] Regulation must work in conjunction with the realities of the market and allow activities that promote real economic growth and job creation.

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[10] G20, *Communique of the G20 Finance Ministers and Central Bank Governors*, Washington D.C. (Sep. 23, 2011).
[11] International Monetary Fund, *Global Financial Stability Report: Durable Financial Stability* at 11 (April 2011).
[12] *Id.*
[13] Peter Miller, *Home Ownership is Down and It Needs to Increase*, The HSH Blog, July 19, 2011, http://blog.hsh.com/index.php/2011/07/homeownership-is-down-and-it-needs-to-increase/.
[14] U.S. Dept. of Treasury, *The Department of the Treasury Blueprint for a Modernized Financial Regulatory Structure* at 3 (March 2008).
[15] Financial Stability Oversight Council, *2011 Annual Report* at iii.
[16] President Barack Obama, Statement on the President's Council on Jobs and Competiveness (2011).

Thus, the U.S. government and the G20 have made clear that the challenge to promoting financial stability is the need for steady economic growth and job creation. Real economic growth and job creation are the keys to the financial stability of the United States that need to be allowed through (d)(1)(J). The Volcker Rule expressly contains (d)(1)(J) to enable regulators to promote those keys within the banking system.

III. Venture capital investment's record of generating economic growth and creating jobs makes it an activity that promotes and protects the financial stability of the United States.

Venture capital is uniquely suited to help promote and protect the financial stability of the United States because it has a long history of helping generate the economic growth and jobs that are the major need of the U.S. economy. Given its position as an activity perfectly suited to addressing these needs of the U.S. economy directly, venture capital should be allowed under (d)(1)(J).[17]

In its 2011 plan to support small business, the Economic Report of the President stressed the importance of venture capital to the economy by writing:

> Although venture capital firms fund less than 1 percent of new startups, firms that have received venture capital investments provide disproportionate growth, accounting for more than 12 million jobs and approximately $3 trillion in revenue in 2008. Venture capital has been especially important in spawning industries such as biotechnology, which has produced life-saving medicines and tens of thousands of American jobs.[18]

Studies show that for every $1 invested in venture capital between 1970 and 2010, $6.27 in revenue was generated. Annual venture capital investment is less than 0.2 percent of U.S. GDP, but accounts for revenue equal to 21 percent of U.S. GDP. Venture capital backed companies account for approximately 10 percent of both private sector employment and total U.S. sales. These numbers have continued to rise in recent years as well.[19] In a period of economic stagnation, such growth should be encouraged to promote and protect the financial stability of the U.S.[20]

[17] Many have also written specifically to argue that venture capital funds should not be included in the definition of "covered fund." We support that position because we believe that Congress never intended to include venture capital in its covered fund restrictions. In this letter, however, we are writing solely to state our belief that, even if it is determined that venture capital funds are included in the definition of "covered funds," they nonetheless promote financial stability for the reasons laid out above.

[18] Executive Office of the President, *Economic Report of the President Chapter 7: Supporting America's Small Businesses*, Feb. 2011 at 149.

[19] IHS Global Insight, *Venture Impact: The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy*, 2011 at 2-4.

[20] Congressman Barney Frank, Chairman of the House Committee on Financial Services at the time of Dodd-Frank's passage and a known proponent of regulation, made clear that Dodd-Frank was not about limiting growth by stating on the House Floor that "[w]e do not want these overdone. We don't want there to be excessive regulation." 156 CONG. REC E1295 (daily ed. July 13, 2010).

The President's Council on Jobs and Competitiveness has stated that venture capital "creates the lion's share of net new American jobs." The Council recommends regulators ease access to venture capital and work to create new venture capital financing options.[21] Allowing venture capital investment through (d)(1)(J) is consistent with this recommendation.

In addition to the empirical data showing its importance to the U.S. economy, the aim of venture capital makes it a key tool for the financial stability of the United States. A leading study on the industry found that venture capital is focused like no other form of investment on the goal of company growth. This focus "drives U.S. economic growth and generates more jobs than other asset classes, and it has set the U.S. economy apart from those of other countries."[22] Senator Chambliss has stated on the Senate floor that venture capital is "vital to sustained job growth."[23] This success in driving real economic growth and creating jobs promotes and protects the financial stability of the United States.

Another factor to consider is the importance of banks to the modern venture capital industry. Banks have become a major source of funding in venture capital in this and previous difficult times. Banks now account for at least seven percent of total venture capital investment.[24] Banks are particularly important in providing venture capital funding outside of traditional venture capital hubs such as California and Massachusetts.[25] Given the importance of venture capital to the financial stability of the United States, the active role banks play in the venture capital market must be protected by (d)(1)(J).

Thank you for considering these comments.

Sincerely,

Robert M. Kimmitt

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[21] The President's Council on Jobs and Competitiveness, *Road Map to Renewal*, 2011 at 24.
[22] IHS Global Insight, *Venture Impact: The Economic Importance of Venture-Capital Backed Companies to The U.S. Economy*, 2009 at vi.
[23] 156 CONG. REC. S4975 (daily ed. June 16, 2010).
[24] Preqin Ltd., *The Venture Capital Industry: A Preqin Special Report*, Oct. 2010 at 9.
[25] Thomas Hellman, Laura Lindsey, & Manju Puri, *Building Relationships Early: Banks in Venture Capital*, REV. FIN. STUD. at 11 (2008).

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