



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF THE BUDGET
ALBANY, NY 12224

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February 13, 2012

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Securities and Exchange Commission

Proposed Rule Making:

- Board of Governors of the Federal Reserve System [Docket No. R-1432] (RIN 7100-AD82)
- Federal Deposit Insurance Corporation (RIN 3064-AD85)
- Office of the Comptroller of the Currency [Docket No. OCC-2011-14] (RIN 1557-AD44)
- Securities and Exchange Commission [Release No. 34-65545; File No. S7-41-11]

Ladies and Gentlemen:

The New York State Division of the Budget (the "Division") submits this letter in response to the request for comments on the proposed rule (the "Proposed Rule") issued by the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (collectively, the "Agencies") to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Volcker Rule").¹ The Division is responsible for advising the Governor on fiscal matters. The Division prepares the Governor's Executive Budget and the State's official Financial Plan projections, implements the budget once it is adopted, and oversees the State's capital program and debt financing activities. The Director of the Division is appointed by the Governor.

New York State is a large and active participant in the municipal bond market in the United States, with \$56 billion in bonds currently outstanding. New York State expects that approximately \$5 billion in bonds ("State-supported bonds") will be issued in the coming year to finance the State's capital program. These State-supported bonds are issued in two ways — through the State's public benefit corporations that issue bonds on behalf of the State, and by the State directly in the form of general obligation bonds. State-supported bonds finance a wide range of important capital purposes,

¹ 76 FR 68846-01 (Proposed Rules of the Department of the Treasury, Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the Securities and Exchange Commission.

including transportation, higher education, public safety, and environmental projects. New York State has never defaulted on its State-supported bonds, including those issued on its behalf by public benefit corporations.

For legal and practical reasons, most State-supported bonds are issued through public benefit corporations, the most important of which are the Dormitory Authority of the State of New York, the Empire State Development Corporation, and the New York State Thruway Authority. In a typical fiscal year, 90 percent of borrowing to finance the State's capital program is done through such public benefit corporations, with the remainder done as general obligation bonds. The State's principal bonding program is the Personal Income Tax ("PIT") Revenue Bond Program. PIT bonds, which are secured by a pledge of 25 percent of the State's PIT receipts, may be issued by any of the State's principal public benefit corporations. PIT bonds are rated on parity with, or better than, the State's general obligation bonds. The State has several other high-rated credits, as well, that are issued exclusively by its public benefit corporations for State purposes.

State borrowing for capital purposes -- whether done by the State's public benefit corporations acting on behalf of the State or directly by the State itself -- is governed by similar rules and characteristics that, taken together, merit uniform treatment as comparable municipal securities. First, all State-supported borrowing is secured, directly or indirectly, by revenues levied by the State. Second, the State appropriates debt service for all State-supported debt in a single annual debt service appropriation bill, signifying the comparable character and treatment of the bonds. Third, all State-supported bonds may be issued only upon authorization of the State Legislature and the approval of the Division. Fourth, the offering statements for all State-supported bonds include disclosure on the State's financial position, reflecting the State's financial relationship to the bonds. Lastly, all State-supported bonds, whether issued directly as a general obligation of the State or on its behalf by its public benefit corporations, are counted by the State's auditors and the credit rating agencies as State-supported debt.

From the perspective of the State and participants in the bond market, therefore, both general obligation bonds and bonds issued by public benefit corporations on behalf of the State are treated in a substantially similar manner. In our view, the Agencies' narrow interpretation of the definition of "political subdivisions" in the proposed Volcker Rule does not recognize this substantially similar treatment. Instead, the interpretation would arbitrarily divide the State-supported debt into two classes based solely on the identity of the issuing entity. From the standpoint of mitigating risk and promoting financial stability, there is no rational basis for prohibiting banks from trading in New York's highly-rated PIT and other bonds issued by its public benefit corporations but allowing them to trade in its similarly-rated general obligation bonds. Accordingly, we urge the Agencies to interpret "political subdivisions" consistent with the definition of "municipal securities" under the Securities and Exchange Act of 1934.

Moreover, as currently drafted, the Proposed Rule creates considerable confusion. On the one hand, the Rule would permit trading in "an obligation issued by any State or any political subdivision thereof." On the other hand, the Release advises (fn. 165) that "the proposed rule does not extend the government obligations exemption to transactions in obligations of an *agency* of any State or political subdivision thereof" (emphasis in original). The entities listed above (Dormitory Authority, Empire State Development Corporation, and New York State Thruway Authority) were each created by State statute as a body corporate and politic constituting a public benefit corporation (or similar statutory structure to permit the issuance of bonds on behalf of the State), and thus the status of the bonds of such entities under the proposed Volcker Rule is unclear. The Division is concerned that the restrictions in fn. 165 quoted above could have a significant material adverse impact on the liquidity of securities issued by these entities and, in turn, the primary market pricing and secondary market trading of their securities. We believe there is a strong likelihood that any such material adverse impact will result in increased costs that will ultimately be borne by the State and the investors that purchase State-supported bonds.

The Division believes that the Agencies have the authority under the Volcker Rule to use the 1934 Act definition of "municipal securities" and would urge you to amend the proposed rule consistent with such definition.

Thank you for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Megna".

Robert L. Megna