August 18, 2016

By Electronic Submission

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, S.W.
Suite 3E–218
Mail Stop 9W–11
Washington, D.C. 20219

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

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

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590–AA42
Federal Housing Finance Agency
Eighth Floor
400 7th Street S.W.
Washington, D.C. 20219.

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314–3428

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: **Incentive-based Compensation Arrangements; Joint Notice of Proposed Rulemaking:** Office of the Comptroller of the Currency (Docket ID OCC–2011–0001); Board of Governors of the Federal Reserve System (Docket No. 1536); Federal Deposit Insurance Corporation (RIN 3064–AD86); Federal Housing Finance Agency (RIN 2590–AA42); National Credit Union Administration; and U.S. Securities and Exchange Commission (File No. S7–07–16)

Ladies and Gentlemen:

The Loan Syndications and Trading Association ("LSTA")[1] appreciates the opportunity to comment on the proposed rule on incentive based compensation practices,[2] which implements

[1] The LSTA is a not-for-profit trade association that is made up of a broad and diverse membership involved in the origination, syndication and trading of commercial loans. The nearly 400 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers and other institutional lenders, as well as law firms, service providers and vendors. The LSTA undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Our comments focus on how the proposed rule pertains to investment advisers and, in particular, managers of Collateralized Loan Obligations ("CLOs").

The LSTA recognizes that Section 956 of the Dodd-Frank Act seeks to address perceived conflicts of interest in the area of executive compensation, including the perception that compensation programs may have encouraged inappropriate risk-taking by senior employees. We recognize that the proposal assesses incentive compensation tiers on the basis of a financial institution's *proprietary* assets. We strongly support this approach and believe that proprietary assets, and not assets under management, are the correct measure for the risks that Section 956 is trying to mitigate.

In addition, we believe greater clarification is required for investment advisers that are subsidiaries of Level 1 or Level 2 financial institutions. In particular, we support the Investment Company Institute's ("ICI") position that "an investment adviser [should be treated] as a standalone institution for purposes of any final rule unless that adviser is operationally integrated with a bank holding company parent or other covered institution."[3]

I. The LSTA agrees that only "proprietary assets" should be included in the calculation of an investment adviser's total consolidated assets.

The proposal states that the definition of "covered institution" includes investment advisers, such as that term is defined in section 202(a)(11) of the Investment Advisers Act of 1940. Covered institutions are divided into three tiers based on average total consolidated assets: Level 1 would be covered institutions with average total consolidated assets over $250 billion and subsidiaries that are themselves covered institutions. Level 2 would be covered institutions with average total consolidated assets between $50 billion and $250 billion and subsidiaries that are, themselves, covered institutions. Level 3 would be covered institutions with average total consolidated assets between $1 billion and $50 billion.

For an investment adviser, the proposal states that "average total consolidated assets would be determined by the investment adviser's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the adviser's most recent fiscal year."[4] In Footnote 72, the proposal reiterates that investment advisers should include only proprietary assets in the calculation. Footnote 72 further clarifies that "non-proprietary assets, such as client assets under

---

marketplace principles and to encourage cooperation and coordination with firms facilitating transactions in loans. Since 1995, the LSTA has developed standardized practices, procedures and documentation to enhance market efficiency, transparency and certainty.

[2] *Incentive-based Compensation Arrangements*, 81 Fed. Reg. 37,670 (June 10, 2016).

[3] *See* Comment Letter from David W. Blass, General Counsel, Investment Company Institute at 2 (July 22, 2016) (OCC-2011-0001-2424) ("ICI Letter").

[4] 81 Fed. Reg. at 37,689.

management would not be included, regardless of whether they appear on an investment adviser's balance sheet."[5]

We strongly agree that only proprietary assets should be used to determine whether an investment adviser is subject to the incentive compensation rule (and at what level). The proposed rule is intended to prevent compensation for employees that would encourage inappropriate risk taking with the adviser's own assets.[6] Client assets under management clearly are in a different category and should not trigger the covered fund designation. This is true whether or not the client assets under management are consolidated onto the adviser's balance sheet.

Moreover, using an investment adviser's assets under management as the basis for determining whether it is a covered institution could lead to the adviser's status fluctuating frequently due both to client flows and to accounting rules.

First, client assets under management can ebb and flow, possibly pushing the investment adviser rapidly into and out of a covered institution designation. In addition, accounting rules pertaining to client asset consolidation have changed a number of times in recent years. Directly following the financial crisis, many funds and CLO managers were required to consolidate client assets onto their balance sheet under new accounting rules. However, recent accounting rule changes have reversed this trend, and more funds and CLO managers have deconsolidated funds and CLOs from their balance sheet in the past year. However, neither the consolidation nor deconsolidation of client assets fundamentally changed either employees' incentives with respect to the adviser's proprietary assets, or the systemic importance of these advisers. Forcing a fund the change its designation frequently could lead to substantial – and needless – business disruptions.

II. The LSTA believes that investment advisers that are functionally separate from affiliated bank holding companies should not be subject to the same incentive compensation rule as the bank holding companies.

The proposed rule states that investment advisers that are subsidiaries of covered depository holding companies would be subject to the same requirements and defined to be on the same level as the covered parent institution.[7] In other words, instead of being subject to principles-based rules, a Level 3 investment adviser that is a subsidiary of a Level 1 depository institution would be subject to Level 1 rules, including deferrals, forfeiture and downward

---

[5] *Id.* at 37,689 n.72.

[6] The proposed rule notes that "poorly structured incentive-based compensation arrangements can provide executives and employees with incentive to take inappropriate risks that are not consistent with the *long-term health of the institution*." *Id.* at 37,674 (emphasis added).

[7] *Id.* at 37,686.

adjustments, clawback and specific limits on maximum performance based compensation, among others.

This treatment is premised on the assumption that there often are product, operations risk management and compensation structures that are integrated throughout a bank and its subsidiaries. While this may be the case for some investment advisers, others do not meet this integration and risk management profile. Where investment advisers function as separate institutions, it does not make sense to subject them to much higher level incentive compensation rules and strictures.

Thus, we agree with the proposal set forth in the ICI letter, which recommends that the determination of whether an investment adviser is operationally independent from a bank holding company parent or other affiliated covered institution should be based on facts and circumstances.[8]

We appreciate the opportunity to comment on the proposed rule. If you have questions on our comments or would like additional information, please contact Meredith Coffey, EVP-LSTA, at [redacted] or [redacted].

Sincerely,

Bram Smith
Executive Director
Loan Syndications and Trading Association

---

[8] *See* ICI Letter, *supra*, at 4–5.