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Via electronic submission

March 11, 2019

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interest In, and Relationships With, Hedge Funds and Private Equity Funds [Docket No. OCC-2018-0029; RIN 1557-AE47] [Docket No. R-1643; RIN 7100-AF 33] [RIN 3064-AE88]

Ladies and Gentlemen:

The Independent Community Bankers of America (“ICBA”)¹ is pleased to respond to the Office of the Comptroller of the Currency’s (“OCC”), the Board of Governors of the Federal Reserve

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

System’s (“Board”), and the Federal Deposit Insurance Corporation’s (“FDIC”) solicitation of comment on a proposal to amend regulations implementing the Bank Holding Company Act’s (“BHC Act”) prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds, in conformance with the statutory changes enacted by the Economic Growth, Regulatory Relief, and Consumer Protection Act (“EGRRCPA”). ICBA and its community bank members are supportive of this proposal and encourage the Agencies to finalize it as soon as practicable.

Background

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), section 619 of which added a new section to the BHC Act, commonly referred to as the “Volcker Rule.”² Among other measures, the Volcker Rule prohibits banking entities from engaging in proprietary trading, or having ownership interests or sponsorships with, hedge funds or private equity funds. The Volcker Rule also places name-sharing restrictions on bank entity-investment advisors, prohibiting those entities from sharing a name, or variation of a name, with private equity funds or hedge funds.

Under the rule, “banking entities” are defined as any insured depository institution, as defined in the Federal Deposit Insurance Act (“FDI Act”), including any company that controls an insured depository institution, and any affiliates or subsidiaries of those entities. Despite the fact that community banks do not typically engage proprietary trading, or engage in relationships with hedge funds or private equity funds, they were nonetheless covered under the scope of the Volcker Rule and were required to demonstrate compliance particularly when engaged in such activities such as interest rate hedging.

Thankfully, in May 2018, Congress amended the Volcker Rule in May 2018 with the passage of EGRRCPA.³ Section 203 of EGRRCPA modified the definition of “bank entity” to exclude certain banks from the Volcker Rule’s prohibitions on proprietary trading, and by permitting hedge funds and private equity funds to share a name, or variation of the same name, with a bank entity that serves as an investment advisor, in certain circumstances.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124.

³ Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115-174.

Proposed Revisions Would Promulgate Beneficial Provisions of EGRRCPA

Currently, the Agencies are proposing to implement the Volcker Rule-related provisions of EGRRCPA. Specifically, the Agencies are proposing two rules that conform to the statutory language of section 203. First, the Agencies proposed to revise the definition of “bank entity” to exclude depository institutions with (1) less than \$10 billion in consolidated assets, and (2) trading assets and trading liabilities that are less than 5 percent of total consolidated assets.

Second, the Agencies propose amending current regulation to allow hedge funds or private equity funds to share the same name, or a variation of the same name, as a banking entity that is an investment adviser, so long as (1) the investment adviser is not an insured depository institution or a company that controls an insured depository institution, (2) the investment adviser does not share the same name or a variation of the same name with any such entities, and (3) the name does not contain the word “bank.”

Overall, ICBA is supportive of both amendments as proposed, which conform with the ICBA-supported changes enacted in section 203 of EGRRCPA. As ICBA has long-noted, the Volcker Rule had an overly expansive scope that inappropriately ensnared community banks. Though community banks were not involved in the activity that led to the creation of the Volcker Rule, they nevertheless had to spend time and resources to demonstrate compliance with its requirements. ICBA was not alone in this contention. Indeed, many policy experts and academics shared this belief. For example, as stressed in former Federal Reserve Governor Daniel Tarullo’s parting remarks, “the concerns underlying the Volcker Rule are simply not an issue at community banks.”⁴ He went on to propose the exemption for community banks that is now enacted law and currently the subject of this letter.

ICBA was pleased by the passage of EGRRCPA and is thankful that the Agencies are now codifying the Act’s beneficial changes. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or michael.emancipator@icba.org.

Sincerely,



Michael Emancipator
Vice President, Regulatory Counsel

⁴ Federal Reserve Gov. Daniel Tarullo, “A Tiered Approach to Regulation and Supervision of Community Banks,” speech at the Community Bankers Symposium, Chicago, Illinois, November, 7, 2014, at <https://www.federalreserve.gov/newsevents/speech/tarullo20170404a.htm>.