CREDIT SUISSE

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Via Electronic Submission

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Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds: Federal Reserve Docket No. R-1694 and RIN 7100-AF 70, OCC Docket No. OCC-2020-0002 and RIN 1557-AE67, FDIC RIN 3064-AF 17, SEC File no. S7-02-20 and RIN 3235-AM 70, and CFTC RIN 3038-AE93

Ladies and Gentlemen:

Credit Suisse appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of the Comptroller of the Currency (the "OCC"), the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC" and, collectively with the Federal Reserve, the FDIC, OCC and the SEC, the "Agencies") on the proposed rulemaking (the "Proposal") that would amend the regulations implementing section 13 of the Bank Holding Company Act ("Implementing Regulations") on certain restrictions on the ability of a banking entity or nonbank financial company supervised by the Federal Reserve to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund ("the Volcker Rule").[1]

The main legislative purpose of the Volcker Rule's covered funds provisions was to prevent banks from effectively subverting the Volcker Rule's prohibitions on banks engaging in proprietary trading by instead engaging in proprietary trading through affiliated funds. As such, banks are, among other things, prohibited from sponsoring or investing in covered funds, subject to certain exemptions and exclusions. Although there is no evidence to suggest that bank sponsorship or investment in private funds played a role in the financial crisis, we understand that this prohibition was motivated by

[1] 85 FR 12120.

a laudable desire to eliminate certain activities which could increase the possibility of future bank failures and create systemic risk for the U.S. banking system and the economy at large.

However, in a manner consistent with those aims, Credit Suisse strongly believes that banks should be able to actively participate in the asset management business. Asset management activities provide banks with earnings that are generally less volatile than traditional banking businesses, such as corporate and retail lending, and less risky than investment banking activities. The asset management business is also less capital-intensive, as it relies predominantly on third-party capital from investors, and not bank proprietary capital. In these ways, asset management activities play an important role in the diversification of banking businesses, contributing to overall institutional safety and soundness.

Bank participation in the asset management business also adds to competition in the sector and provides more investment opportunities to investors. In particular, asset managers that are affiliated with banks are more highly regulated than "independent" asset managers, and have larger risk, compliance, and control-related functions, which provide additional comfort to certain classes of investors. Indeed, Congress recognized the value of asset management activities for both banks and their investors by specifically creating an "Asset Management Exemption" in the Volcker Rule, which enables banks to continue to participate in the market.

While the goals of the Volcker Rule's covered fund provisions are sensible as presently constructed, the current provisions go well beyond the statutory intent of preventing bank proprietary trading, and have imposed far higher burdens on bank-affiliated funds, creating a number of unintended consequences. These unintended consequences effectively constrain the ability of banks to fully and actively participate in the asset management business, depriving banks of a lower risk and less volatile business and depriving investors of investment opportunities.

The Agencies' Proposal recognizes a number of these unintended consequences and Credit Suisse submits this comment letter in an effort to both thank the Agencies for the efforts to date and to provide recommendations that could assist in further alignment of the Volcker Rule with the original legislative intent. We explain our recommendations at greater length in the subsequent sections of this comment letter.

1. **Foreign Excluded Funds:** Exempt Qualifying Foreign Excluded Funds ("QFEFs") from the definition of banking entity. The Agencies should also clarify that the anti-evasion requirement for QFEFs is not intended to capture activity by third-party banking entities.
2. **Covered Funds Exemptions and Exclusions**: Finalize the proposed exclusions but provide greater flexibility in the types of assets that qualify for credit fund exclusions. Permit qualifying credit funds to hold any assets that banking entities may invest in directly, subject to 25% of the qualifying credit fund's total assets. Finally, the Agencies should also maintain a separate loan securitization exclusion that allows issuers to hold up to 10% of non-loan assets.
3. **Super 23A:** Clarify that, consistent with Regulation W, Super 23A does not apply extraterritorially, and clarify the Proposal's importation of the Federal Reserve's Regulation W to Super 23A.
4. **Seeding Period:** Create a streamlined process for presumptively granting two-year extensions to the current one-year seeding period.

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We thank the Agencies for their considerations of our comments. If you have any questions, please do not hesitate to contact the undersigned, Roger Machlis (roger.machlis@credit-suisse.com), Yosef Ibrahimi (yosef.ibrahimi@credit-suisse.com), or Peter Ryan (peter.ryan@credit-suisse.com).

Sincerely,

Eric M. Varvel
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1. Foreign Excluded Funds

- **Exempt Qualifying Foreign Excluded Funds ("QFEFs") from the definition of banking entity.**

A significant concern with the current language in the Volcker Rule is the overbroad and extraterritorial application to foreign fund vehicles, commonly referred to as foreign excluded funds. The Volcker Rule applies to "banking entities"[2] and their "affiliates,"[3] and these terms are defined by reference to statutory law. When promulgating the original Volcker Rule, the Agencies recognized that it was not necessary or appropriate for covered funds to fall within the definition of "banking entity" and, accordingly, excluded covered funds from the definition of banking entity. A similar carve-out was not provided for foreign excluded funds. This leads to the anomalous and unintended result that non-U.S. funds with no U.S. investors, which are affiliates of non-U.S. banking entities, are subject to the Volcker Rule's proprietary trading restrictions while a covered fund is not subject to the proprietary trading restrictions. The application of activities-based restrictions to non-U.S. funds represents broad extraterritorial overreach, which was clearly not intended when the legislation was enacted.

The Agencies, both in a 2017 Policy Statement[4] and through the Proposal, have recognized that foreign excluded funds which met certain criteria should be treated as "Qualifying Foreign Excluded Funds" ("QFEFs"), entitled to be treated (at least for certain purposes) as similar to covered funds. Although the Proposal recognizes that QFEFs should not be subject to the proprietary trading restrictions, the relief is less comprehensive than that contemplated in the Policy Statement, which noted that QFEFs would not be treated as banking entities. Credit Suisse proposes that QFEFs should be explicitly carved out from the definition of banking entity on a permanent basis. Application of the proprietary trading restrictions is likely the most significant consequence flowing from banking entity status under the Volcker Rule – and is addressed under the Proposal. However, there are additional consequences flowing from QFEFs being treated as banking entities for other purposes, which Credit Suisse believes are unintentional and warrant appropriate consideration. For example, a QFEF may still qualify as a banking entity – and would therefore be treated as a banking entity for purposes of Super 23A if it transacts with a covered fund – a restriction which does not apply to one covered fund transacting with another. In addition, by virtue of the "banking entity" definition, the Proposal would continue to prescribe a number of compliance and operational burdens on QFEFs including backstop provisions and reporting obligations. Given that these lingering obligations may be an inadvertent consequence of the Proposal, Credit Suisse suggests excluding QFEFs in their entirety from the banking entity definition.[5]

The Policy Statement and Proposal also differ with respect to their anti-evasion language and this difference has introduced some uncertainty. Credit Suisse believes the intent of the anti-evasion language has not changed and recommends use of the language in the Policy Statement. The Policy Statement requires that a QFEF "[i]s not operated in a manner that enables the foreign banking entity to evade the requirements of [the Volcker Rule]." In contrast the Proposal requires that a QFEF "[i]s not operated in a manner that enables *any other banking entity* to evade the requirements of [the Volcker Rule]." Needless to say that while a banking entity sponsoring a QFEF can create controls and monitor

[2] 12 U.S.C. § 1851(h)(1). The definition of banking entity includes (i) insured depository institution, (ii) companies that control an insured depository institution, (iii) foreign banking organizations treated as bank holding companies under the International Banking Act of 1978, and (iv) all affiliates of such entities.
[3] Implementing Regulations § _.2(a)(adopting the definition of affiliate set forth in section 2(k) of the Bank Holding Company Act of 1956).
[4] See FRB, FDIC, OCC, Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017). The Agencies extended the application of the Policy Statement to July 21, 2021. See Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 19, 2019).
[5] 85 FR 12125.

the activities of its own affiliates, it would be incredibly complex to create controls and monitor for the activity of third-party banking entities. Credit Suisse does not believe this ambiguity in the language of the Proposal was intended, and urges the use of the language from the Policy Statement. Alternatively, the Proposal language can be clarified to note the anti-evasion language applies to prohibit a QFEF operating "in a manner that enables any *affiliated banking entities* to evade the requirements of [the Volcker Rule]."

Recommendations: Credit Suisse thanks the Agencies for the proposed relief from the proprietary trading restrictions for QFEFs. Credit Suisse suggests the Agencies consider expressly excluding QFEFs from the definition of "banking entity" to avoid additional unintended consequences resulting from banking entity status. Additionally, Credit Suisse urges the Agencies to clarify that the anti-evasion requirement for QFEFs is not intended to capture activity by third-party banking entities.

2. Covered Funds Exemptions and Exclusions

- **Finalize the proposed exclusions but provide greater flexibility in the types of assets that qualify for credit fund exclusions.**
- **The agencies should maintain a separate loan securitization exclusion that allows issuers to hold up to 10% of non-loan assets.**

Credit Suisse is supportive of the exclusions in the Proposal. Specifically, Credit Suisse had advocated for express exclusion of credit funds in its 2018 comment letter and supports the exclusion of credit funds, family wealth management vehicles, customer facilitation vehicles, and qualifying venture capital funds.

As mentioned above, the main legislative purpose of the covered funds provisions of the Volcker Rule was to prevent banks from effectively subverting the Volcker Rule's prohibitions on engaging in proprietary trading by instead conducting such activity through affiliated funds. We understand that these provisions were motivated by the appropriate desire to eliminate certain activities that could increase the possibility of future bank failures and create systemic risk for the U.S. banking system. However, the application of these provisions is overbroad and this has led to a number of unintended results and adverse consequences.[6] Credit Suisse appreciates the Agencies' recognition that these activities, particularly those detailed under the credit funds exclusion, are non-proprietary by nature and thus should not be subject to the Volcker Rule.

Credit Suisse generally supports the proposed list of assets that a credit fund could hold but believe that the list of assets should be more inclusive in terms of debt instruments and derivatives. For example, it should be clearer that loans and debt instruments would encompass the range of an issuer's capital structure from senior debt, to mezzanine debt, to lower subordinated debt, and including collateralized loan and collateralized debt obligations ("CLOs" and "CDOs"). These same instruments are included in the portfolios of registered investment companies, including investment companies advised by bank affiliated investment advisers. Credit Suisse also urges that the list of

[6] Included in this universe are certain real estate funds, securitization funds, fixed-income funds, credit funds, and funds that acquire and hold stakes in other companies. The reason that many of these funds have relied on the sections 3(c)(1) or 3(c)(7) exemptions under the 1940 Act is that other exemptions from registration provided under the 1940 Act (which do not result in the application of the definition of "covered fund") may be too narrow to fit certain types of investment strategies. However, many of these funds have no connection to investment activities that could be described as proprietary trading or trading that would be viewed as creating systemic risk to the banking system, but, nonetheless, are swept into the scope of the covered fund rules solely based on the process of how these funds are offered to investors (i.e., pursuant to the exemptions in sections 3(c)(1) or 3(c)(7)). Additionally, as noted above, many of these funds employ similar strategies to registered investment companies and business development companies ("BDCs") but may not be able to entirely operate under the 1940 Act regulatory framework applicable to registered investment companies and BDCs and, therefore, limit their offerings only to investors that are able to meet certain investor qualification standards required by sections 3(c)(1) and 3(c)(7) of the 1940 Act.

derivatives that a credit fund can utilize be clarified and expanded to include, not only other derivatives related to interest rate and currency hedging,[7] but also to derivatives related to hedging actual credit risk, such as credit default swaps and total return swaps,[8] in order to afford credit funds the full complement of hedging strategies which could be selected by a fund depending on the type of asset the credit fund is hedging or the general market risk related to particular debt instruments at a given point in time. These hedging strategies routinely are available to registered funds and may be utilized in accordance with their individual investment policies and the requirements of the Investment Company Act of 1940, as amended (the "1940 Act") and the rules and regulations thereunder. We believe that the ability of credit funds to hedge, not only their currency and interest rate risk, but also their credit risk, is consistent with safety and soundness principles.

The Agencies have proposed that credit funds be permitted to hold related rights and other assets, including equity instruments, incidental to acquiring, holding, servicing or selling loans or debt instruments, subject to certain conditions. Credit Suisse agrees with the Agencies. A lender should be able to share in the profits, income, or earnings of a borrower in consideration for the making of a loan or as an alternative to interest on an extension of credit. Additionally, warrants, equities, and other rights can be acquired in the context of a work-out or restructuring of a loan or debt following a default or credit impairment and credit funds, similar to registered investment companies and BDCs, should be permitted to acquire these interests as a matter of course, consistent with their investment objectives and policies. Consistent with the recommendation expressed by the Securities Industry and Financial Markets Association,[9] Credit Suisse suggests the Agencies permit qualifying credit funds to hold any assets that banking entities may invest in directly, subject to 25% of the qualifying credit fund's total assets. Providing qualifying credit funds the additional flexibility to hold securities and other assets more generally would better facilitate the provision of credit and credit intermediation into the market because it would allow the credit fund to manage its exposures appropriately. Furthermore, a 25% threshold would ensure qualifying credit funds would still be principally engaged in providing credit and credit intermediation.

With respect to the question of whether the Agencies should impose quantitative limitations, additional capital charges, control restrictions or other requirements on the use of the credit fund exclusion, we believe that such additional restrictions are not only unnecessary, given the nature of the instruments that a credit fund would hold, but also may be counterproductive to the exclusion the Agencies propose to create. As noted, registered investment companies, including bank-affiliated investment companies, can hold the same investments, and aside from certain restrictions imposed by the 1940 Act, mainly in terms of diversification and concentration, are not subject to additional capital charges or control restrictions. To impose some or all of the additional restrictions suggested by the Agencies could potentially result in an exclusion that cannot effectively be utilized because a credit fund subject to such added restrictions may present additional challenges for a bank-affiliated sponsor, including rendering the fund uncompetitive with other non-bank affiliated funds in the marketplace. We believe that the general framework for a credit fund exclusion as proposed by the Agencies, with added flexibility in terms of investments and derivatives used for hedging purposes and

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[7] Certain types of swaps may hedge both interest rate and currency risk at the same time and, therefore, if a bond defaults and the counterparty pays the investor the recovery value of the bond, it would also pay the recovery in the investor's regional currency.

[8] A credit default swap enables a fund to attempt to mitigate the risk of default or credit quality deterioration in one or more of a fund's individual holdings or in a segment of the fixed income securities market. The fund pays the counterparty to the swap agreement a payment or stream of payments over the term of the agreement and in the event of a default or credit deterioration, the fund can elect to receive the full notional value of the swap or the par value of the bond in exchange for the reference asset. Total return swaps routinely are used by financial institutions and other entities to address concerns with risk exposure by transferring risk to another counterparty. The party hedging its risk agrees to pay a total return payment to the counterparty, which amount depends on the credit standing of the borrower, and, in exchange, receives a market rate of interest on the underlying bond. If the credit standing of the bond borrower decreases, the total return payment by the hedging party to the swap counterparty also decreases.

[9] SIFMA, "Comment Letter on Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds" at Annex A, pp. 21, (March 11, 2020). Available at: https://www.sifma.org/wp-content/uploads/2020/03/SIFMA-Comment-Letter-on-Volcker-Funds-NPR.pdf.

the disallowance of guarantees by the banking entity, appropriately addresses the safety and soundness concerns of the Agencies without the need for additional restrictions.

Furthermore, the Agencies should consider a separate loan securitization exclusion that is distinct from the aforementioned credit exclusion. The current Volcker Rule provides an exclusion for issuers of asset-backed securities whose assets consist of loans or other qualifying assets including cash equivalents, certain rate or foreign exchange derivatives, servicing assets, interests in a tax subsidiary or similar entity, and assets acquired by the issuer in a workout or foreclosure.

The text of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, states that nothing under Section 619 should "be construed to limit or restrict the ability of a banking entity… to sell or securitize loans in a manner otherwise permitted by law." Notwithstanding this clear direction from Congress, the 2013 rulemaking imposed severe limits upon the ability of banks to participate in the securitization market. The prohibition against holding non-loan assets, in particular, has caused a number of banking entities to divest, limit, or restructure their holdings in loan securitizations.

The Agencies have previously sought comment as to whether a loan securitization should be permitted to hold up to a specific limit of assets in non-loans to combat this consequence. Credit Suisse, consistent with a number of industry peers, suggests that loan securitization issues should be permitted to hold 10% of non-loan assets. Such a threshold would provide the necessary flexibility for impacted funds.

Recommendations: Credit Suisse recommends the Agencies finalize all four exclusions, but provide greater flexibility in the language with respect to what types of assets qualify for credit fund exclusions. Credit Suisse suggests the Agencies permit qualifying credit funds to hold any assets that banking entities may invest in directly, subject to 25% of the qualifying credit fund's total assets. Finally, the Agencies should also maintain a separate loan securitization exclusion that allows issuers to hold up to 10% of non-loan assets.

3. Super 23A Restrictions on Covered Transactions

- **Clarify that, consistent with Regulation W, Super 23A does not apply extraterritorially, and clarify the Proposal's importation of the Federal Reserve's Regulation W to Super 23A.**

Credit Suisse believes that the Agencies, through the original Volcker Rule, made the "Super 23A" prohibitions broader and more stringent than intended or required by statute.[10] As implemented, Super 23A does not advance the primary goal of the Volcker Rule – prohibiting proprietary trading – and instead imposes significant costs and transactional complexity on banking entities. Credit Suisse believes the most efficient way to effectuate the intent of the Volcker Rule would be to align Super 23A with the regulatory framework currently provided by Section 23A and the Federal Reserve's Regulation W. Specifically, the Agencies should clarify that (i) consistent with Section 23A and Regulation W, Super 23A does not apply extraterritorially,[11] and (ii) the Proposal's importation of the Federal Reserve's Regulation W to Super 23A.

[10] The statutory language is codified at 12 U.S.C. § 1851, and all subsequent references to the Statute are to that section. § 1851(f) contains the statutory language on covered transactions.

[11] Sections 23A and 23B of the Federal Reserve Act and Regulation W thereunder only apply to the activities of U.S. insured depository institutions and the U.S. branches and agencies of foreign banks. *See* 12 U.S.C. § 371c, 371c-1 (member banks), 1828(j) (state nonmember banks), 1468(a) (federally insured savings associations); 12 C.F.R. § 223.61(a) (U.S. branches and agencies of foreign banks).

The Agencies should also recognize that Super 23A does not have extraterritorial effect and does not apply to transactions between a non-U.S. banking entity acting outside the United States and certain covered funds, including: (1) those that a non-U.S. banking entity sponsors or invests in under the solely outside the United States ("SOTUS") exemption, and (2) other covered funds that are organized under non-U.S. law. In each of these cases, the covered fund does not present risks to U.S. financial stability. As a threshold matter, there is a presumption against applying U.S. law on an extraterritorial basis absent an explicit indication that Congress intended to act extraterritorially. Nothing in the statutory text indicates such a legislative intent. In fact, the historical approach toward financial regulation by Congress and the Agencies has been a "water's edge" approach, with appropriate deference to a banking entity's home country regulator. Section 23A and Regulation W do not apply to the non-U.S. branches of a non-U.S. bank or to transactions between U.S. branches and affiliates that are not engaged in U.S. activities; a similar limit should apply to Super 23A. Finally, there is no policy justification for prohibiting a non-U.S. banking entity from engaging in transactions with a SOTUS or non-U.S. fund when there is no restriction on that bank's ability to invest in the fund. In revising the Volcker Rule, the Agencies should recognize explicitly that Congress did not intend Super 23A to govern the relations between a non-U.S. bank and SOTUS/non-U.S. funds and therefore clarify that Super 23A does not have such an extraterritorial impact.

Credit Suisse commends the Agencies for proposing adoption of the Regulation W exemptions into Section 23A.[12] Credit Suisse believes the Agencies intended to make the exemptions contained in Regulation W broadly available. However, there is some ambiguity in the Proposal. The Regulation W exemptions for purchases of liquid assets, marketable securities and municipal securities by their terms apply for transactions between a banking entity and a *securities affiliate*. We believe the Agencies meant for these transactions to be possible for transactions between a banking entity and a covered fund. Accordingly, the Agencies should revise 248.14(a)(1) to apply "as if such banking entity and the affiliate thereof were a member bank and the covered fund were an affiliate *or securities affiliate* thereof."

Recommendations: Credit Suisse recommends that the Agencies clarify that, consistent with Regulation W, Super 23A does not apply extraterritorially and clarify the Proposal's importation of the Federal Reserve's Regulation W to Super 23A.

4. Seeding Period

- **Create a streamlined process for granting two-year extensions to the current one-year seeding period.**

The Proposal was silent with respect to the seeding period. The so-called "asset management exemption" to the Volcker Rule restrictions on bank ownership or sponsorship of covered funds was included by Congress in recognition of the value that the asset management business brings to the U.S. banking industry and the U.S. economy as a whole. Asset management is a risk-reducing business for banks because the asset management business generally provides a steady earnings flow and involves less volatility and less principal risk than core commercial and investment banking activities.

[12] See 85 FR at 12144, stating "The agencies believe that, under certain circumstances, it would be appropriate to permit banking entities to enter into certain covered transactions with related covered funds, and therefore are proposing to amend §_.14 of the implementing regulations as described below. The proposed amendments would not modify the definition of 'covered transaction' but instead would authorize banking entities to engage in limited activities with related covered funds."

Congress included the asset management exemption in the Volcker Rule in order to allow banks to remain in this business, but limited the amount of capital that banks invest in their affiliated funds to avoid banks having too much exposure to the risks of their managed funds. Congress realized that the per-fund limit on bank capital investments in affiliated covered funds (3%) was much too restrictive to enable banks to provide seed capital for new funds, and provided by statute for extensions of the seeding period for covered funds.[13] Accordingly, the Volcker Rule permits banks to provide seed capital to new covered funds, but requires the banks to reduce such seed capital to conform to the per-fund investment limits within one year, subject to the discretion of the Federal Reserve to extend the seeding period for up to two years.

Several years of industry experience with the Volcker Rule shows that one year is frequently too short a period of time for a new fund to develop a sufficient track record that would be required to attract investment capital from many third-party investors. In fact, because any extension request would need to be submitted to the Federal Reserve 90 days before the end of the initial one-year seeding period,[14] and given the need to prepare a request, banking entities frequently have to make decisions on seeking extension of the seeding period after only a few months of sales efforts. This creates a significant administrative burden on the operation of covered funds, creates planning uncertainty in the offering of covered funds, and places a material burden on the applications departments of the Federal Reserve Banks that consider these extension requests under delegated authority from the Federal Reserve.[15]

The statutory language provides that the Federal Reserve may extend the period of time to reduce the seeding period of a covered fund for two additional years if such an extension would be consistent with safety and soundness principles and is in the public interest. The current Volcker Rule also recognize that the Federal Reserve alone may extend the seeding period of a covered fund.[16] Because the Volcker Rule vests discretion in the Federal Reserve alone, Credit Suisse believes that the Federal Reserve may act alone to issue guidance articulating a streamlined process for the extension of [the] seeding period for covered funds. Although the Volcker Rule provides a list of factors for the Federal Reserve to consider, the Federal Reserve is entitled to consider all the facts and circumstances, subject to the statutory requirement that any extension be consistent with safety and soundness principles and be in the public interest.

Given the real limitations of an initial one-year seeding period, and the requirement that applications be filed 90 days before the end of the initial seeding period, Credit Suisse proposes that the Federal Reserve issue guidance adopting streamlined procedures for the consideration and granting of seeding period extension requests for covered funds on a routine basis. Credit Suisse proposes that any bank without material deficiencies in its covered fund compliance procedures, and which represents through a self-certification that a fund is in conformance with all the requirements of the asset management exemption (other than reducing the bank's seed capital to 3% or less), should be presumptively entitled to automatic two-year extensions without any further showing by the bank.

The Agencies would have the ability to test and monitor the adequacy of each bank's process (and the underlying basis of any self-certification) through ordinary course examination and review of the policies and procedures of their regulated institutions. Furthermore, banks would still be subject to an aggregate Tier 1 Capital limitation on covered fund interests – so the extension of covered fund seeding periods would not permit unlimited fund activities. The aggregate fund limitation, requirement for adequate compliance processes, and ordinary course examination and review by the Agencies

[13] 12 U.S.C. Sec. 1851(d)(4)(C).
[14] SR 17-5 Procedures for a Banking Entity to Request an Extension of the One-Year Seeding Period for a Covered Fund (July 24, 2017).
[15] Id. The Federal Reserve has delegated authority to grant (but not to deny) such requests to the Federal Reserve Banks, if criteria specified by the Federal Reserve are met.
[16] Section __.12(e).

would ensure there is adequate consideration of safety and soundness principles with respect to extensions of covered fund seeding periods.

Credit Suisse's proposed process is informed by the approach the Federal Reserve took in considering extensions for "illiquid funds."[17] There, the Federal Reserve announced it generally expected illiquid funds to qualify for extensions – though noted a few limited cases where extensions might not be granted, such as a lack of meaningful progress on conformance efforts, deficient compliance programs, or concerns about evasion. In that circumstance, the Federal Reserve's guidance specified that there should be a certification of the General Counsel or Chief Compliance Officer of the sponsoring entity. Credit Suisse believes that a similar certification from a senior officer of the sponsoring entity would be appropriate for a streamlined process for the consideration of extensions for covered funds.

Recommendations: Credit Suisse supports the Agencies' potential creation of a streamlined process for granting two-year extensions to the current one-year seeding period.

[17] SR-18 Procedures for a Banking Entity to Request an Extended Transition Period for Illiquid Funds.