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MORTGAGE BANKERS ASSOCIATION

April 1, 2020

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

Re: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds ("Volcker Rule")

Dear Agencies:

The Mortgage Bankers Association[1] respectfully submits the comments below on revisions to the Volcker Rule proposed by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission and the Commodity Futures Trading Commission (hereinafter "Agencies").[2] Our comments on the proposal focus principally on potential impacts on our bank members that engage in commercial and multifamily real estate finance activity.

The Volcker Rule was enacted as part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. It generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (''covered fund''), subject to certain exemptions.

The Agencies issued final regulations to implement the Volcker Rule in 2013. Following a 2018 notice-and-comment rulemaking, the agencies issued a final rule implementing the amendments in November 2019 which became effective in January 2020.This proposal would further amend the covered fund provision of the Rule.

MBA supports the continuing efforts to improve the regulations implementing the Volcker Rule that led to this proposal. As we describe in more detail below, we support proposed changes to the definition of "ownership interest," but we recommend modifications to the provision regarding

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] 85 Fed. Reg. 12120 (Feb. 28, 2020).

creditor removal rights, and we recommend modification or clarification of the “fixed principal payments” language used in the safe harbor of senior loans or other senior debt instruments.

“Other Similar Interest” and Creditors’ Removal Rights

The implementing regulations define an ‘‘ownership interest’’ in a covered fund to mean any equity, partnership, or other similar interest. Under the proposal, an “other similar interest” for purposes of the definition of “ownership interest would include an interest that:

> Has the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event).

MBA recommends that the right of removal in this provision be modified so as not to cover the right to remove an investment manage for cause or to vote for a nominated replacement manager upon an investment manager’s resignation or removal, regardless of whether an event of default or acceleration event has occurred or not. We do not believe that the exercise of such rights would impart a degree of control or influence that would warrant inclusion in the definition of “ownership interest.”

Senior Loan and Other Senior Debt Interest Safe Harbor

The Agencies recognize that, due to the current broad definition of ownership interest, some loans by banking entities to covered funds could be deemed to be ownership interests. To address that unintended reach of the current definition, the Agencies propose a safe harbor for senior loans or senior debt instruments that meet certain characteristics. Among other required characteristics for a senior loan or other senior debt interest to qualify for the safe harbor, “[t]he holders of such interest … may only receive … fixed principal payments on or before a maturity date.”

MBA supports the proposed safe harbor for senior loans or senior debt securities that do not have equity-like characteristics. These interests are not similar to an equity or partnership interest and therefore including them within the definition of ownership interest is inconsistent with the common understanding of the concept of ownership.

We also urge the Agencies to clarify that the existence of acceleration or amortization provisions with respect to repayment of principal does not exclude debt instruments from the safe harbor. Specifically, the term “fixed principal payments” used in the safe harbor provision should be clarified or replaced with language to the effect of that, for purposes of this safe harbor, principal payments must be contractually determined (i.e., “fixed” by reference to contractual terms), which we believe would be consistent with the apparent underlying intent of the term “fixed principal payments.”

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We appreciate that the Agencies' continuing efforts improve regulations implementing the Volcker Rule and the opportunity to provide our feedback on this round of proposed changes. Please contact Bruce Oliver at boliver@mba.org if you have any questions about these comments.

Sincerely,

[redacted]

Mike Flood
Senior Vice President, CMF Policy & Member Engagement
Mortgage Bankers Association