May 9, 2011

By electronic submission

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Washington, D.C. 20520

Federal Deposit Insurance Corporation
550 17th Street, N.W.
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Office of the Comptroller of the Currency
250 E Street, S.W.
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Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20551

Securities and Exchange Commission
100 F Street, N.E.
Washington DC 20549

Re: **Supplemental Comment Letter in Advance of Notice of Proposed Rulemaking Implementing the Private Funds Portion of the Volcker Rule**

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association[1] appreciates the opportunity to provide the agencies (the "**Agencies**") charged with issuing the substantive rules implementing new Section 13 of the Bank Holding Company Act of 1956 (the "**Volcker Rule**") with several comments on the private funds portion of such rules in advance of any notice of proposed rulemaking.

This comment letter supplements our comment letter dated April 14, 2011.[2] In this letter, we make the following supplemental comments and recommendations:

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] *See* SIFMA comment letter in advance of any notice of proposed rulemaking dated April 14, 2011, available at http://www.sifma.org/issues/item.aspx?id=24745 (the "**April 14 Comment Letter**"). *See also* SIFMA comment letter on the FSOC Study (Private Funds) dated November 5, 2010, available at http://www.sifma.org/Issues/item.aspx?id=22125 (the "**FSOC Study Comment Letter**"); SIFMA comment

- the Agencies should exclude from the general definition of the terms "hedge fund" and "private equity fund":
    - all wholly-owned subsidiaries of banking entities, whether or not all of their direct or indirect parent banking entities qualify for an exemption under Sections 3(b)(1) or 3(b)(2) of the Investment Company Act of 1940 (the "**1940 Act**") and whether or not any unaffiliated persons own any of their debt securities; and
    - market utilities and other regulated financial companies in which banking entities routinely invest that rely on an exemption under Sections 3(c)(1) or 3(c)(7) of the 1940 Act, including securities clearing agencies, derivatives clearing organizations, securities exchanges, swap execution facilities, registered broker-dealers (including alternative trading systems), futures commission merchants, operating subsidiaries, bank service companies, bank holding companies, Edge Act companies and Agreement corporations (as defined below);
- certain parallel fund and master/feeder fund structures should be treated as a single fund for purposes of calculating the 3% investment limits;
- the standards for determining the independence of directors of a fund for purposes of determining whether a banking entity is a sponsor of such fund should be based on the FDIC's guidelines for determining that the audit committee of a bank's board of directors is independent from the bank's management; and
- in addition to the sources of authority for granting exemptions from the general definition of the terms "hedge fund" and "private equity fund" identified in our April 14 comment letter, we believe that the Agencies may also act through the Securities and Exchange Commission (the "**SEC**") to grant exemptions under Section 6(c) of the 1940 Act from the term "investment company" as that term is used in the Volcker Rule.

We have included proposed language in Annex A for implementing these recommendations in the form of proposed regulations.

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letter on the FSOC Study (Proprietary Trading) dated November 5, 2010, available at http://www.sifma.org/issues/item.aspx?id=22126; SIFMA comment letter on the Board's proposed conformance rules dated December 27, 2010, available at http://www.sifma.org/Issues/item.aspx?id=22813.

Discussion

I. Wholly-Owned Subsidiaries Should Not Be Treated as Hedge Funds or Private Equity Funds or be Designated as Similar Funds

As explained in both our April 14 comment letter and our FSOC Study comment letter, Congress recognized that the general definition of "hedge fund" and "private equity fund" appeared to sweep in many investment vehicles and other corporate structures that have never been considered hedge funds or private equity funds. Legislative history and the FSOC Study confirmed this.[3] Congress intended for the Agencies to use their interpretive and exemptive authorities to construe the general definition to be consistent with congressional intent.

In our April 14 comment letter, we requested the Agencies to confirm that no wholly-owned subsidiaries that are exempt from the definition of "investment company" under the 1940 Act pursuant to Section 3(b)(3) of that Act would be treated as "hedge funds" or "private equity funds" or be designated as "similar funds."[4] We now supplement that request by asking the Agencies to clarify that no wholly-owned subsidiary of a banking entity would be treated as a hedge fund or private equity fund, or be designated as a similar fund, for purposes of the Volcker Rule, regardless of whether all of such subsidiary's direct or indirect parent banking entities qualify for an exemption under Sections 3(b)(1) or 3(b)(2) of the 1940 Act or any unaffiliated persons own any of such subsidiary's debt securities.

All wholly-owned subsidiaries of a parent banking entity that qualify for an exemption from the term "investment company"[5] under Sections 3(b)(1) or 3(b)(2) of the 1940 Act would qualify for an exemption under Section 3(b)(3). Under Section 3(b)(3), a wholly-owned subsidiary is "[a]ny issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned" by a qualifying parent. The term "securities" includes both debt and equity securities. We believe that most wholly-owned subsidiaries of a bank or thrift holding company with one or more insured depository institution, insurance company, broker-dealer, commercial finance or foreign bank subsidiaries that collectively account for more than 60% of the bank or thrift holding company's consolidated assets should qualify for an exemption under Section 3(b)(3), provided that the wholly-owned subsidiary is not held directly or indirectly under an insured depository institution, insurance company, broker-dealer, commercial finance or foreign bank subsidiary that relies on one of the

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[3] *See* April 14 Comment Letter at 16–17.

[4] *Id.* at 19.

[5] The term "investment company" is defined in relevant part in Section 3(a)(1) of the 1940 Act as "any issuer which . . . (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire ***investment securities*** having a value exceeding ***40 per centum*** of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." (emphasis added)

provisions in Section 3(c) and that does not qualify for an exemption under Sections 3(b)(1) or 3(b)(2) of the 1940 Act for its own exemption from the term "investment company."

We do not believe that Congress intended for any wholly-owned subsidiary of a banking entity to be included within the definition of the terms "hedge fund" and "private equity fund" for purposes of the Volcker Rule, regardless of whether all of its direct or indirect parent banking entities qualifies for an exemption under Sections 3(b)(1) or 3(b)(2) or any unaffiliated persons own any of its debt securities. We believe that Congress intended for the terms "hedge fund" and "private equity fund" to be limited to issuers that have at least some unaffiliated investors in the form of limited partners or other similar investors and are not joint ventures. Thus, wholly-owned subsidiaries held directly or indirectly under any banking entity, including an insured depository institution, broker-dealer, commercial finance, foreign bank, or bank or thrift holding company, whether or not such banking entity qualifies for an exemption under Sections 3(b)(1) or 3(b)(2) of the 1940 Act, should not be treated as hedge funds or private equity funds or designated as similar funds as long as they are wholly-owned for purposes of the Volcker Rule. This means that all of their equity, partnership or other ownership interests are directly or indirectly held or controlled by a single banking entity or its affiliates, provided that a limited number of their employees that are familiar with the business and financial status of the subsidiary may invest in up to 10% of the total ownership interests of the subsidiary.[6] It also should not matter whether any debt securities of a subsidiary are owned or controlled by one or more unaffiliated persons, because any interests in such debt securities do not amount to equity, partnership or other ownership interests.

We believe that the Agencies have the power to implement this recommendation under any of three sources of authority. First, we believe they have the authority to do so under their general power to interpret the Volcker Rule or their authority to exempt any activity under Section (d)(1)(J) of the Volcker Rule. Second, we believe they have the power to act through the SEC to grant exemptions under Section 3(b)(2) of the 1940 Act, which provides that "any issuer" may be declared to be "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses." Alternatively, we believe that the Agencies have the authority to act through the SEC to grant exemptions under Section 6(c) of the 1940 Act, for the reasons described in Section V. below.

[6] The SEC has taken the position in several no-action letters that exemptions from the registration requirements of the 1940 Act available to wholly-owned subsidiaries remain available where an otherwise wholly-owned subsidiary issues securities to a limited number of employees familiar with the business and financial status of that subsidiary. *See* Continental Illinois (Delaware) Limited, SEC No-Action Letter, 1973 SEC No-Act. LEXIS 1846, at 2-3 (Apr. 1, 1973); Public Services Resources Corp., SEC No-Action Letter, 1988 SEC No-Act. LEXIS 1570, at 15-19 (Nov. 22, 1988); National Medical Enterprises, SEC No-Action Letter, 1990 SEC No-Act. LEXIS 40 (Jan. 8, 1990).

We have included proposed language in Annex A for implementing the recommendations above in the form of proposed regulations.

II. Market Utilities and Other Regulated Financial Companies

We believe that the Agencies should also confirm that market utilities and other regulated financial companies will not be treated as "hedge funds" or "private equity funds" for purposes of the Volcker Rule. Many of these companies rely on an exemption under Sections 3(c)(1) or 3(c)(7) of the 1940 Act and do not qualify for an alternative exemption. If they become public companies, they typically perform an analysis to ensure that less than 40% of their assets are investment securities[7] or obtain a specific exemption from the 1940 Act pursuant to Section 6(c) of the 1940 Act.

However, banking entities have long been both majority and minority investors in U.S. and foreign market utilities, including securities clearing agencies, derivatives clearing organizations, securities exchanges, derivatives boards of trade and alternative trading systems, and will shortly be expected to invest in swaps execution facilities and security-based swap execution facilities. Many of these are privately owned rather than publicly owned. Banking entities have been majority and minority owners of other privately held regulated financial companies, including bank holding companies, securities broker-dealers, bank service companies, operating subsidiaries of national or state-chartered banks,[8] companies organized under Section 25A of the Federal Reserve Act (the "**Edge Act**") ("**Edge Act companies**") and corporations that have an agreement with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act ("**Agreement corporations**").

These market utilities and other regulated financial companies have never been considered to be hedge funds and private equity funds, and we do not believe Congress intended for the Volcker Rule to prohibit banking entities from investing in them. Yet many of them rely on Sections 3(c)(1) or 3(c)(7) for an exemption from the term "investment company," and do not qualify for any alternative exemption. As a result, in the absence of an exemption, the Volcker

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[7] The term "investment securities" is defined in Section 3(a)(2) of the 1940 Act to include all securities other than "(A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c)."

[8] Subsidiaries of national and state-chartered banks are required to restrict their activities to those that are permissible for national banks to engage in, must be majority-owned by their parent bank and must satisfy certain other conditions in order to qualify as "operating subsidiaries." See 12 C.F.R. §5.34. Unlike "financial subsidiaries," which operate under 12 U.S.C. §24a and which are permitted to engage in any activity that is financial in nature, incidental to a financial activity or complementary to a financial activity under Section 4 of the Bank Holding Company Act, operating subsidiaries must confine their activities to those that are within the "business of banking" or incidental thereto under Section 16 of the Glass-Steagall Act, 12 U.S.C. § 24(Seventh).

Rule will prohibit banking entities from acquiring or retaining any equity, partnership or other ownership interests in them or entering into covered transactions with them, even though they are manifestly ***not*** hedge funds or private equity funds.

It is possible that many of these market utilities or other regulated financial companies may fall outside the general definition of an investment company because less than 40% of their assets are investment securities.[9] But it would serve no public purpose to require banking entities to perform such a fact-intensive analysis on these types of companies because it is inconceivable that Congress intended for them to be treated as hedge funds or private equity funds for purposes of the Volcker Rule. In addition, banking entities may not have access to the information necessary to perform such a fact-intensive analysis. In contrast, they can generally rely on such an analysis having been done correctly in the case of a regulated financial company that is publicly traded.

We believe that the Agencies should exercise their authority under Section (d)(1)(J) of the Volcker Rule to exclude all U.S. and foreign market utilities and certain other regulated financial companies from the general definition of the terms "hedge fund" and "private equity fund." We believe that acquiring or retaining ownership interests in, and entering into covered transactions with, these types of U.S. and foreign market utilities and other regulated financial companies will generally promote and protect the safety and soundness of banking entities and the financial stability of the United States. As a result, these regulated financial companies should be carved out of the general definition of the terms "hedge fund" and "private equity fund," absent a specific finding by a banking entity's primary federal financial regulator that a particular market utility or other regulated financial company is or should be treated as a hedge fund or private equity fund for purposes of the Volcker Rule.

We have included proposed language in Annex A for implementing the recommendations above in the form of proposed regulations.

III. Parallel Fund Structures / Master-Feeder Structures

SIFMA recommends that the Agencies clarify that in either a parallel fund structure in which several formally separate entities are operated as a single fund or investment program, or in a master-feeder fund structure in which one or more feeder entities is established to invest in a master fund and thereby to participate in the same underlying investment program, a banking entity's permissible per fund *de minimis* co-investment be calculated with reference to the aggregate fund structure rather than any individual entity.

[9] *See* Section 3(c)(1) of the 1940 Act.

In both parallel fund and master-feeder structures, the parallel and feeder entities are typically established for a variety of client-driven reasons. For example, U.S. tax-exempt investors may need certain terms in their fund agreements in order to avoid undesirable tax consequences (such as incurring income that is taxable to them despite their tax-exempt status), which terms would be sub-optimal for a U.S. taxable investor. To address this need, a banking entity might establish a separate entity with the required features, which generally have no significant practical impact on the investment holdings or the strategy of the parallel or feeder entities, to accommodate the tax exempt investors' needs, and a separate vehicle without these features for U.S. taxable investors.

In a parallel fund structure, once the parallel entities are established they are typically operated as if all the entities constituted a single fund. For example, contractual obligations embedded in each entity's governing documents cause the entities to function as a single investment program. Each investment program operates under a single strategy and is treated functionally as though it were one entity when dealing with the sponsoring banking entity, employees, limited partners, lenders and counterparties. The mechanisms used to cause the separate legal entities to operate as closely as possible to a single "fund" include requirements in each entity's governing documents that such entity (and all the other entities in the parallel fund structure) have an identical investment strategy, and, subject to very limited exceptions, invest in the same investments, at the same time, on the same terms and in proportion to each vehicle's capital commitments relative to the overall fund program. Similar mechanics govern dispositions of investments. As a result, while they are separate legal entities, all the parallel entities participate in the same underlying investment program pro rata and "lockstep" with each other.

The feeder entities in a master-feeder structure are similarly bound to the same underlying investment program. The separate feeder entities are established for the purpose of investing in the interests of the master fund, which holds and manages the investment program's investments. Each feeder entity typically makes no investments other than in the master fund (subject to very limited exceptions for investment of cash in short-term instruments pending investment in the master fund, payment of expenses or liabilities, facilitating redemptions and making distributions).

Each of the entities in parallel fund structures and master-feeder structures, respectively, typically has the same general partner or managing member. In addition, the separate entities are typically only able to take certain actions by a vote that aggregates the interests of all investors across all of the entities that constitute the fund program, thereby avoiding an entity-by-entity vote with potentially conflicting outcomes. Units in each entity are typically sold using the same private placement memorandum, in some instances with a brief "wrapper" attached to the memorandum explaining the particular characteristics of that vehicle.

The amount of co-investment by a banking entity across a fund program is identical whether measured as 3% of each constituent entity or 3% of the total ownership interests of the entire program. It would be significantly less costly and administratively far simpler for a banking entity to be permitted to co-invest in a single vehicle within the fund program up to 3% of the total equity interests of the fund program, rather than to invest in each parallel or feeder entity, especially if the structure of the parallel or feeder entity could give rise to unfavorable tax or other consequences because the entity had been structured to take into account the attributes of a different kind of investor (for example, there would be tax inefficiencies for a U.S. taxable investor if that investor were to invest in a fund designed for U.S. tax-exempt investors). Calculating the 3% per fund *de minimis* limit in this way would also simplify the supervisory obligations of the agencies responsible for overseeing the banking entity's compliance with the Volcker Rule.

We have proposed language to implement this recommendation in Annex A.

IV. Independence

In our April 14, 2011 comment letter,[10] we recommended that the Agencies clarify that a banking entity will not be deemed to be the sponsor of a newly organized hedge fund or private equity fund solely by virtue of selecting a majority of its directors or trustees, provided that a majority of such directors or trustees is independent of the banking entity and its affiliates.

We believe that it would be impractical, and serve none of the policy interests underlying the Volcker Rule, to treat a banking entity as the sponsor of a fund merely because it proposed a board of directors upon formation of a new fund, if a majority of the board is independent.

We recommend that the Agencies adopt in this context a standard of independence closely based on the guidelines currently applied by the FDIC to determine that audit committee members of insured depository institutions are "independent of management."[11] Because the Volcker Rule operates as a new section of the Bank Holding Company Act and primarily applies to banking entities, we believe it is appropriate to consider existing standards and guidelines from banking law in formulating a standard of independence for the Volcker Rule. We also believe the FDIC guidelines are particularly relevant and appropriate in this context in part because the FDIC is one of the Agencies responsible for implementing the Volcker Rule. In addition, adopting a standard closely based on the FDIC guidelines ensures a familiar approach for regulators and banking entities alike. The FDIC has maintained the guidelines since 1991, and the statute under which they were promulgated (Section 112 of the Federal Deposit Insurance Corporate

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[10] *See* April 14 Comment Letter at A-4.

[11] 12 C.F.R. Part 363, App. A, Guideline 28.

Improvement Act of 1991)[12] was the model for another key corporate governance provision, Section 404 of the Sarbanes-Oxley Act of 2002.[13] Further, the FDIC guidelines are aligned with analogous standards of independence applied by the New York Stock Exchange and NASDAQ.

We have included proposed language for this recommendation in Annex A.

V. Use of the SEC's General Exemptive Authority under Section 6(c) of the 1940 Act for Purposes of the Volcker Rule

In our April 14 comment letter, we identified five sources of authority on which the Agencies could rely to interpret or grant exemptions from the general definition of the terms "hedge fund" and "private equity fund" for purposes of the Volcker Rule. We now supplement that discussion by suggesting a sixth alternative source of authority.

The general definition of the terms "hedge fund" and "private equity fund" relies on the definition of the term "investment company" as defined in the 1940 Act. Specifically, the general definition provides that a hedge fund or private equity fund is any "issuer that would be an investment company, as defined in [the 1940 Act], but for Sections 3(c)(1) or 3(c)(7) of that Act." In our April 14 comment letter, we requested the Agencies to confirm than any issuer that qualifies for any exemption from the definition of the term "investment company" other than the exemptions in Sections 3(c)(1) or 3(c)(7) would not fall within the general definition, even if the issuer has the option to rely on Sections 3(c)(1) or 3(c)(7).

Section 6(c) of the 1940 Act authorizes the SEC ***by regulation or order*** to "conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of [the 1940 Act] . . . if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." This exemptive authority includes the power to grant exemptions from the definition of the term "investment company," although the SEC has typically exercised it by granting exemptions from some or all of the substantive provisions of the 1940 Act. We believe that any issuer that would qualify for an exemption from the term "investment company" granted under Section 6(c) would fall outside the general definition of the terms "hedge fund" and "private equity fund" under the Volcker Rule because such an issuer would not rely on an exemption under Sections 3(c)(1) or 3(c)(7).

We believe that the SEC has the authority to grant an exemption from the term "investment company" as defined in the 1940 Act for all of the entities that we believe

[12] Pub. L. No. 102-242, 105 Stat. 2236.

[13] Pub. L. No. 107-204, 116 Stat. 745.

should be exempted from the general definition of the terms "hedge fund" and "private equity fund" for purposes of the Volcker Rule, provided that such exemption meets the conditions set forth in Section 6(c) – *i.e.*, that the exemption "is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Because Section 6(c) of the 1940 Act expressly grants the SEC authority to impose any conditions on an exemption granted under Section 6(c), we believe the SEC has the power to limit the validity of any exemption from the term "investment company" to the scope of that term as used in the Volcker Rule.

We also believe that the Agencies can act through the SEC to grant an exemption under Section 6(c), provided that the scope of such an exemption is limited to the Volcker Rule.

We do not believe that Section (d)(1)(J) or any other provision of the Volcker Rule overrides or otherwise limits the Agencies' ability to act through the SEC to grant an exemption under Section 6(c). Section (d)(1)(J) authorizes the Agencies to grant an exemption from the prohibitions and restrictions in the Volcker Rule for "any activity" if such an exemption would promote and protect the safety and soundness of banking entities and the financial stability of the United States. Although the exemptive authority under Section (d)(1)(J) of the Volcker Rule is subject to a more demanding standard than the standard in Section 6(c) of the 1940 Act, the exemptive authority in Section (d)(1)(J) is not limited to the definition of the terms "hedge fund," "private equity fund" or "investment company," but applies to any prohibition or limitation on any activity in Section (a) of the Volcker Rule. In contrast, an exemption granted through the SEC under Section 6(c) would have a more limited effect under the Volcker Rule, possibly applying only to the scope of the general definition of the terms "hedge fund" or "private equity fund."

There is nothing in the text or legislative history of the Volcker Rule that conflicts with our conclusion that for purposes of the Volcker Rule a banking entity may rely on an exemption from the definition of "investment company" granted by the Agencies acting through the SEC. Nor is there anything in the text or legislative history of the Volcker Rule that would limit the Agencies' discretion to limit the scope of any exemption granted under Section 6(c) of the 1940 Act to the Volcker Rule.

We believe that the Agencies would have the authority to act through the SEC to grant a conditional exemption under Section 6(c) from the term "investment company" for all of the companies that we requested the Agencies to treat as being outside the general definition of the terms "hedge fund" or "private equity fund" in our April 14 comment letter. Any such exemption could be conditioned on the exemption being valid solely for purposes of the Volcker Rule.

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We thank the Agencies for their consideration of our comments in advance of the issuance of proposed rules. If you have any questions, please do not hesitate to call me at 212-313-1114, or our counsel, Randall D. Guynn, Davis Polk & Wardwell LLP, at 212-450-4239, or Yukako Kawata, Davis Polk & Wardwell LLP, at 212-450-4896.

Sincerely,

Randolph C. Snook
Executive Vice President
Securities Industry and Financial Markets Association

 ANNEX A

Note: *The following proposed language is offered to illustrate how our comments could be implemented and is presented as blacklined amendments to the proposed language in Annex B of our April 14, 2011 comment letter, which is reproduced below.*

Definitions

. . .

(i) *Covered fund* means any hedge fund or private equity fund, including any issuer that shall have been designated as a similar fund under this subpart, except for any—

(1) issuer that qualifies for any exemption from the definition of investment company, as defined in the Investment Company Act, other than section 3(c)(1) or 3(c)(7) of that Act, even if it also qualifies for an exemption under section 3(c)(1) or 3(c)(7), and has not been designated as a similar fund;

(2) subsidiary of a banking entity—

(A) that qualifies for an exemption from the definition of investment company, as defined in the Investment Company Act, under section 3(b)(3) of that Act; or

(B) all of the equity, partnership or other ownership interests of which are directly or indirectly owned or controlled by the banking entity or any of its affiliates, provided that not more than 10% of the ownership interests of such subsidiary may be owned by a limited number of their employees each of which is familiar with the business and financial status of such subsidiary;

(3) regulated financial company, unless the federal regulatory agency that issues regulations with respect to the relevant banking entity under section 13(b)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1852(b)(2)) shall have determined by regulation or order that such regulated financial company is a covered fund;

. . .

(r) *Master/feeder fund structure* means a structure in which one or more covered funds (each, a *feeder fund*) hold interests in a single fund (the *master fund*) that holds and manages all of the investments made by any covered fund in such master/feeder structure (except as otherwise provided in this section), provided that—

(1) each feeder fund was formed for the purpose of acquiring equity, partnership or other ownership interests in the master fund;

(2) the equity, partnership and other ownership interests of each feeder fund in the master fund constitute the sole investments of such feeder fund, except for investments in short-term instruments used primarily for cash-management purposes (including temporary investment of cash pending investments in the master fund, and payment of expenses, liabilities, redemptions and distributions); and

(3) any voting interests of all persons holding an equity, partnership or other ownership interest in a feeder fund are pooled pro rata among all feeder funds for purposes of voting on matters of the master fund.

. . .

(s) *Parallel fund structure* means a structure in which two or more covered funds are operated as if all such covered funds constituted a single fund, provided that—

(1) each such covered fund is required to invest side-by-side on a lockstep basis with each other; and

(2) any voting interests of all persons holding a voting equity, partnership or other ownership interest in any such covered funds are pooled pro rata among all funds in the structure with respect to at least a majority of the matters requiring a vote of the holders of such ownership interests.

. . .

(y) *Regulated financial company* means any—

(1) bank holding company as defined in section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.);

(2) bank service company as defined in the Bank Service Company Act (12 U.S.C. 1861 et seq.);

(3) board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(4) broker or dealer that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78c et seq.);

(5) clearing agency that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 U.S.C. 78c et seq.);

(6) commodity pool operator that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(7) commodity trading advisor that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(8) company that is licensed as an insurance or reinsurance company under the laws of any State;

(9) company that controls one or more insured depository institutions, including a bank holding company and a savings and loan holding company;

(10) corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(11) corporation having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(12) derivatives clearing organization that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(13) exchange that is registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78c et seq.);

(14) Federal Home Loan Mortgage Corporation;

(15) Federal National Mortgage Association;

(16) foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(17) futures association that is registered with Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(18) futures commission merchant that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(19) introducing broker that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(20) investment adviser that is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (17 U.S.C. 80b-1 et seq.);

(21) operating subsidiary in which a national bank would be permitted to invest under 12 C.F.R. 5.34 (or any successor regulation) if the banking entity is a national bank or as if the banking entity were a national bank;

(22) retail foreign exchange dealer that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(23) savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(24) securities information processor that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78c et seq.);

(25) security-based swap execution facility , security-based swap data repository, security-based swap dealer or major security-based swap participant that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78c et seq.);

(26) swaps execution facility, swap data repository, swap dealer or major swap participant that is registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(27) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.);

(28) transfer agent that is registered with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78c et seq.); and

(29) other company that is organized under the laws of the United States, any State, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands or a foreign country (as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101) that is determined to be a regulated financial company for purposes of this subsection with respect to any banking entity by the regulatory authority that issues regulations with respect to such banking entity under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1852(b)(2)).

. . .

(cc) *Select or control a majority of the directors, trustees, or management of a fund* by a banking entity shall not apply to the selection or control of the initial directors, trustees, or management of a newly established covered fund, provided that a majority of such initial directors, trustees or management is independent of such banking entity. A director or trustee shall be considered independent of a banking entity for purposes of this definition if the banking entity does not have a relationship with the director or trustee that would allow the banking entity to interfere with the exercise of the independent judgment of such director or trustee in carrying out the responsibilities of a director or trustee, subject to the guidelines set forth in 12 C.F.R. Part 363, Appendix A, Guideline 28 (or any successor guidelines), as if the banking entity were an insured depository institution or the management of an insured depository institution and the director or trustee were a member of the audit committee of the board of directors of such insured depository institution.

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II. Clarifying Regulations

(a) **Calculation of investment limits**. In determining whether a banking entity is in compliance with the investment limits in section 13(d)(4)(B)(ii) of the Bank Holding Company Act—

(1) with respect to the per-fund limit in section 13(d)(4)(B)(ii)(I)—

(A) any equity, partnership or other ownership interests of a banking entity in a covered fund will be calculated on the basis of invested capital of the banking entity in such covered fund, with the numerator being the invested capital of the banking entity in the covered fund and the denominator being the total amount of the invested capital of all investors in the covered fund; and

(B) all equity, partnership or other ownership interests in one or more of covered funds in a parallel fund structure or a master/feeder fund structure shall be treated as if they were interests in a single fund, with the numerator being the invested capital of the banking entity in all of the covered funds of such parallel fund structure or master/feeder funds structure and the denominator being the total amount of the invested capital of all investors in all of the covered funds of such parallel fund structure or master/feeder fund structure.

. . .