



Appendix A

Draft Regulatory Language

I. Definitions

- A. *Bank Holding Company Act* means the Bank Holding Company Act of 1956, as amended (12 U.S.C.A. 1841 et seq.).
- B. *Banking entity* means any banking entity as defined in section 13(h)(1) of the Bank Holding Company Act, but shall not include any company that would be a banking entity solely because:
 - []. *[other appropriate exclusions]; or*
 - []. it is directly or indirectly owned or controlled by a banking entity pursuant to section 2(h)(2) of the Bank Holding Company Act and section 211.23(f)(5) of the Board’s Regulation K (12 C.F.R. Part 211).

For purposes of section 13(f) of the Bank Holding Company Act, in the case of a banking entity that is or is controlled by a QFBO, the term “banking entity” refers to a branch, agency or subsidiary of such banking entity established in the United States or organized under the laws of the United States or of one or more States, and any subsidiary of any such branch, agency or subsidiary.

- C. *Investment Company Act* means the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.).
- D. *Investment grade securities* means securities that are rated “investment grade”, as defined in section 211.2(n) of the Board’s Regulation K (12 C.F.R. Part 211) or that meets any other credit-worthiness standard that replaces investment grade for purposes of section 211.4(a)(2) of Regulation K.
- E. *Ownership interest* in a private fund means any equity, partnership or other ownership interest in such fund, but shall not include:
 - []. *[other appropriate exclusions]; or*
 - []. private fund-linked derivative products and other financial instruments that are in some way based on the performance of a private fund but which do not represent, or carry all of the rights



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and privileges attached to, an actual ownership interest in such fund.

- F. *Private fund* means any hedge fund or private equity fund as defined in section 13(h)(2) of the Bank Holding Company Act, except for any:
- []. *[other appropriate exclusions]*; or
 - []. regulated foreign investment company.
- G. *Proprietary trading* means proprietary trading as defined in section 13(h)(4) of the Bank Holding Company Act.
- H. *QFBO* means a qualifying foreign banking organization under section 211.23(a) of the Board’s Regulation K (12 C.F.R. Part 211).
- I. *Regulated foreign investment company* means any fund, trust or other pooled or collective investment vehicle that would be an investment company under the Investment Company Act if its securities were publicly offered in the United States (i) the securities of which are traded on an exchange outside the United States, or (ii) (A) the securities of which have been publicly offered and distributed outside the United States pursuant to applicable foreign regulatory requirements, and (B) that is subject to substantive regulation by a foreign government authority.
- J. *Regulated insurance company* for purposes of section 13(d)(1)(F) of the Bank Holding Company Act includes each insurance company directly engaged in the business of insurance, whether such insurance company is organized under the laws of a State or any other U.S. or foreign jurisdiction, if but only if the requirements of clause (i) and clause (ii) of section 13(d)(1)(F) are satisfied (in the case of clause (i), insofar as the insurance company investment laws, regulations, and written guidance of the State or other U.S. or foreign jurisdiction in which such insurance company is domiciled are concerned).
- K. *U.S. resident* has the meaning ascribed to “U.S. person” in section 230.902(k) of Regulation S of the Securities and Exchange Commission (17 C.F.R. Part 230).

II. Implementing Regulations

- A. *Proprietary trading solely outside the United States authorized.* A banking entity may engage in proprietary trading pursuant to section



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4(c)(9) or 4(c)(13) of the Bank Holding Company Act, as implemented in the Board's Regulation K (12 C.F.R. Part 211), so long as:

1. the banking entity engaged as principal in the proprietary trading is, or is directly or indirectly controlled by, a QFBO;
2. the banking entity engaged as principal in the proprietary trading is not, and is not directly or indirectly controlled by, a banking entity that is organized under the laws of the United States or of one or more States;
3. the proprietary trading positions as principal (including financial obligation and ownership) are held, reported and maintained, outside the United States;
4. any entity in the United States that acts as broker, agent, adviser or intermediary, or in any similar capacity, for, on behalf of, or for the account of, a banking entity, conducts any such activities pursuant to the banking entity's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the banking entity (acting through one or more of its senior officers) outside the United States; and
5. the banking entity engaged as principal in the proprietary trading is subject, directly or indirectly, to prudential standards (such as capital adequacy and risk asset exposure) evaluated by (and subject to the oversight of) the QFBO's home country supervisor or other applicable foreign government authority outside the United States.

B. *Investment in and sponsorship of private funds solely outside the United States authorized.* A banking entity may acquire or retain an ownership interest in, or sponsor, any private fund pursuant to section 4(c)(9) or 4(c)(13) of the Bank Holding Company Act, as implemented in the Board's Regulation K (12 C.F.R. Part 211), so long as:

1. the banking entity is, or is directly or indirectly controlled by, a QFBO;
2. the banking entity is not, and is not directly or indirectly controlled by, a banking entity that is organized under the laws of the United States or of one or more States;



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3. in the case of a private fund sponsored or controlled by the banking entity, the private fund is organized under the laws of a jurisdiction outside the United States;
 4. the banking entity's private fund ownership interests and related risk are held, reported and maintained outside the United States;
 5. the decision to acquire or retain an ownership interest in, or sponsor, the private fund is made pursuant to the banking entity's specific authorization and review, pursuant to risk parameters established, reviewed and maintained by the banking entity (acting through one or more of its senior officers) outside the United States;
 6. the banking entity that acquires or retains an ownership interest in, or sponsors, the private fund is subject, directly or indirectly, to prudential standards (such as capital adequacy and risk asset exposure) evaluated by (and subject to the oversight of) the QFBO's home country supervisor or other applicable foreign government authority outside the United States; and
 7. the banking entity and its affiliates and agents do not sell, or offer for sale, to a U.S. resident any ownership interest in the private fund at any time after the end of the applicable conformance period described in section 13(c)(2) of the Bank Holding Company Act.
- C. *Proprietary trading in foreign government securities.* The [relevant agency] hereby determines, pursuant to section 13(d)(1)(J) of the Bank Holding Company Act, that it would promote and protect the safety and soundness of banking entities and the financial stability of the United States to include, among the activities permitted under section 13(d)(1)(A) of the Bank Holding Company Act, obligations of (1) any national government or political subdivision of any country, where such obligations are investment grade securities; or (2) an agency or instrumentality of any national government, where such obligations are investment grade securities and are supported by the taxing authority, guarantee or full faith and credit of that government.