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Submitted via electronic submission

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Re: Joint Association Comments on the Joint Notice of Proposed Rulemaking Implementing the Provisions of the Volcker Rule that Impact Securitizations (Federal Reserve Docket No. R-1432 and RIN 7100 AD 82; OCC Docket ID OCC-2011-14; FDIC RIN 3064-AD85; SEC File No. S7-41-11)

Dear Ladies and Gentlemen,

The Association for Financial Markets in Europe ("**AFME**"), the Asia Securities Industry & Financial Markets Association ("**ASIFMA**") and the International Capital Market Association ("**ICMA**") (each described in the Annex) appreciate the opportunity to comment on the joint notice of proposed rulemaking (the "**Proposed Rules**")[1] of the agencies addressed above (the "**Agencies**") implementing new Section 13 of the Bank Holding Company Act of 1956, which is commonly known as the "**Volcker Rule**". The Volcker Rule was added by Section 619 of the Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**"). Our comments focus on the effect of the Proposed Rules on asset-backed securities ("**ABS**") from the perspective of non-U.S. industry and market participants.

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[1] 76 Fed. Reg. 68,846 (Nov. 7, 2011).

Background and Summary of Main Points

The Volcker Rule generally prohibits banking entities, including certain non-U.S. banks,[2] from (a) engaging in proprietary trading, (b) sponsoring, or acquiring or retaining an ownership interest in, a "private equity fund" or a "hedge fund" ("**Covered Funds**") (such restriction, the "**Ownership Restriction**"), and (c) entering into "covered transactions" (as defined in Section 23A of the Federal Reserve Act) with any Covered Fund for which it serves as sponsor, investment manager or investment advisor (such restriction is referred to herein as "**Super 23A**").[3]

The Ownership Restriction and Super 23A of the Volcker Rule were designed to prevent banking entities from having excessive financial exposure to private equity funds and hedge funds engaged in trading and other investment activities deemed to be speculative. They were not intended to limit the ability of banking entities to engage in securitization activities. Congress specifically sought to avoid this result by specifying that nothing in the Volcker Rule is to be "construed to limit or restrict the ability of banking entities or nonbank financial companies…to sell or securitize loans in a manner otherwise permitted by law" (the "**Securitization Exclusion**").[4]

However, despite the clear intention of the Securitization Exclusion, the definition of Covered Fund proposed by the Agencies in the Proposed Rules will significantly limit and restrict the ability of banking entities, including non-U.S. banks, to securitize financial assets. The Volcker Rule defined "hedge fund" and "private equity fund" broadly to include any company that would be an investment company under the Investment Company Act of 1940 (the "**1940 Act**") but for Section 3(c)(1) or Section 3(c)(7) of the 1940 Act, and the Agencies directly incorporated this definition into the Covered Fund definition in the Proposed Rules. Additionally, in the Proposed Rules, the Agencies have significantly expanded the potential reach of the definition of Covered Fund to include "any issuer [as defined in the 1940 Act]…that is organized or offered outside the United States…" that would be an investment company under the 1940 Act, but for Section 3(c)(1) or 3(c)(7) of the 1940 Act, if such issuer were organized under the laws of, or offered securities to one or more residents of, the United States (the "**Non-U.S. Issuer Inclusion**").[5]

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[2] "Banking entity" is defined in Volcker Rule Section 13(h)(1) and includes any insured depository institution, any company that is affiliated with an insured depository institution, any company that is treated as a bank holding company under the International Banking Act, and any affiliate of any of the foregoing.

[3] Volcker Rule Section 13(a)(1), 13(f).

[4] Volcker Rule Section 13(g)(2).

[5] Proposed Rules Section .10(b)(1)(iii).

Many issuers of ABS ("**ABS Issuers**") rely upon Section 3(c)(1) or 3(c)(7) (or would hypothetically need to rely upon one of such sections if organized, or offering securities, in the United States) for an exemption from the 1940 Act. This is particularly true for ABS Issuers with no, or very little, nexus with the United States ("**Non-US ABS Issuers**") that are less likely to have been structured to meet alternative exclusions from the 1940 Act. For example, many Non-US ABS Issuers do not use a trustee that is a U.S. bank and therefore are unable to technically comply with the requirement that a U.S. bank act as trustee under the exemption in Rule 3a-7 of the 1940 Act, which rule exempts from its definition of "investment company" certain issuers of asset-backed securities.[6]

Therefore, by relying, or having to hypothetically rely, upon the exemption in 3(c)(1) or 3(c)(7), an ABS Issuer will be treated as a Covered Fund under the Proposed Rules. Accordingly, the Ownership Restriction will prohibit banking entities from sponsoring or retaining an ownership interest in such ABS Issuers (subject to the limited exemptions in the Proposed Rules); and Super 23A will prohibit a banking entity from entering into "covered transactions" with ABS Issuers for which it serves as sponsor, investment manager or investment advisor.

We acknowledge the Agencies' efforts to effectuate the Securitization Exclusion in the Proposed Rules by exempting from the Ownership Restriction certain loan securitizations and ownership interests retained in order to comply with the risk retention requirements of the Dodd-Frank Act (the "**loan securitization exemptions**").[7] However, we believe that the proposed loan securitization exemptions from the Ownership Restriction are too narrow, and would be meaningless for a substantial number of ABS Issuers because they fail to apply to Super 23A and that, without further changes, the Proposed Rules do not sufficiently achieve the intended effect of the Securitization Exclusion.

In this respect, we endorse both the general spirit and detail of the comments made by the members of our sister organization, the Securities Industry and Financial Markets Association ("**SIFMA**"), in its letter to the Agencies in response to the Proposed Rules and their impact on securitization (the "**SIFMA Securitization Letter**").

Thus, the aim of Part I of our response is to emphasize the key points and themes raised in the SIFMA Securitization Letter and reiterate the need to exclude ABS Issuers from definition of Covered Fund under the Proposed Rules, or if such exclusion is not made, to make the alternative changes recommended in the SIFMA Securitization Letter. Without such changes the Proposed Rules will significantly limit and restrict the ability of banking entities to securitize loans and thus undermine the purpose of the Securitization Exclusion. Part I also affirms our support for the comments made in the SIFMA Securitization Letter

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[6] 1940 Act, Rule 3a-7(a)(4)(i).

[7] Section 15G of the Securities Exchange Act of 1934.

that are relevant regardless of whether ABS Issuers are excluded from the definition of Covered Fund.

In addition to the above, we have significant concerns with the potential extraterritorial effects of the Volcker Rule on non-U.S. banks sponsoring, holding an ownership interest in, or otherwise engaging in a "covered transaction" with, Non-US ABS Issuers and the limited restraints of the Proposed Rules on this reach.

In enacting the Volcker Rule, Congress sought to limit the territorial reach of the Volcker Rule for non-U.S. banks engaging in certain transactions solely outside of the United States (the "**Non-US Exclusions**").[8] However, in our view the Proposed Rules do not go far enough to effect the plain language of the Non-US Exclusions set out in the Dodd-Frank Act, congressional intent, the policy objectives of the Volcker Rule, and longstanding U.S. policies limiting the extraterritorial scope of U.S. banking law and according appropriate deference to home country regulators.

Thus, in Part II of our response, we suggest the changes we believe should be made to the Proposed Rules to more appropriately incorporate the Non-US Exclusions and limit the Volcker Rule's impact on Non-US ABS Issuers.

Part I – Supplemental Comments to the SIFMA Securitization Letter

1. ***ABS Issuers should not be Covered Funds*** *(Response to Questions 225, 227, 228, 229 and 237 of the Proposed Rules)*

As noted above, our members strongly agree with SIFMA's fundamental proposal to exclude ABS Issuers (and issuers of insurance-linked securities ("**ILS Issuers**")) from the definition of Covered Fund under the Proposed Rules. Any other approach runs the substantial likelihood of falling short of the Securitization Exclusion's mandate that nothing in the Volcker Rule should be construed to ***limit*** or ***restrict*** a banking entity's ability to securitize.[9]

For example, if ABS Issuers are not excluded from the definition of Covered Fund, there is a risk that any ABS Issuer relying on an exemption from the 1940 Act other than Section 3(c)(1) or 3(c)(7) will inadvertently fall within such definition in the future should the Securities and Exchange Commission (the "**SEC**") amend its rules and regulations under the 1940 Act. This example is currently relevant as the SEC has indicated that it is reexamining

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[8] Proposed Rules, Sections .6(d) and .13(c).

[9] See also, SIFMA Securitization Letter, Part X (commenting that any ABS Issuer that is excluded from the definition of Covered Fund should also be excluded from the definition of "banking entity" to the extent caught by that definition. We fully support this comment should the Agencies exclude ABS Issuers from the definition of Covered Fund).

the terms of the Section 3(c)(5) and Rule 3a-7 exemptions.[10] Many ABS Issuers rely upon these exemptions, and if these exemptions change in such a way that these ABS Issuers instead needed to rely upon either Section 3(c)(1) or 3(c)(7), these ABS Issuers could become subject to the Volcker Rule. Excluding ABS Issuers from the definition of Covered Fund would ensure that any such event does not override the mandate of the Securitization Exclusion to not limit or restrict the ability of banking entities to securitize loans.

The Agencies have long recognized that securitization, when used properly, can enhance banks' safety and soundness. Securitization allows banks and other regulated financial institutions to obtain, amongst other things, lower cost of funding, enhanced liquidity through diversified funding sources, increased ability to manage interest rate risk, and reduced asset-class concentrations.[11] Further, securitization is essential to the financial stability of U.S. and global economies. The U.S. and other G-20 countries, since the onset of the financial crisis, have recognized the importance of securitization to a stable financial system and have strived to re-establish a properly functioning securitization market. Congress recognized these principles when it enacted the Securitization Exclusion to carve out securitization from the Volcker Rule, and, instead addressed any perceived imperfections of securitization through specifically targeted laws and initiatives.[12] Therefore, we strongly believe excluding all ABS Issuers from the definition of Covered Fund is the most efficient and appropriate manner in which to effect the clear intent of Congress and the explicit mandate of the Securitization Exclusion.

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[10] *See* SEC Release No. IC-29779. In the release, the SEC has requested comment on (i) the treatment of securities under Rule 3a-7, whether the ratings requirements in Rule 3a-7 should be changed and whether other modifications to that rule may be appropriate, and (ii) whether Section 3(c)(5) of the 1940 Act should be amended by Congress to exclude certain asset-backed securities issuers or whether the SEC should limit the use of Section 3(c)(5) by certain issuers of asset-backed securities.

[11] See e.g., FDIC Risk Management Credit Card Securitization Manual (April 2007) (stating that "[s]ecuritizations, when used properly, provide financial institutions with a useful funding, capital, and risk management tool. By using securitizations, a credit card issuer may be able to obtain lower cost funding, diversify its funding sources, improve financial indices, potentially lower regulatory costs, and increase its ability to manage interest rate risk. In addition, securitizations may allow banks to reduce asset-class concentrations in the overall portfolio, create underwriting and pricing discipline (provides market feedback regarding asset value), and leverage origination skills and systems capacity by increasing the volume of transactions that pass through the bank."), also available at http://www.fdic.gov/regulations/examinations/credit_card_securitization/pdf_version/index.html.

[12] See, e.g., Dodd-Frank Act, Section 621 (mandating regulation for potential conflicts of interest in ABS transactions), Section 941 (mandating risk retention for ABS), Section 943 (mandating periodic disclosure for repurchase activity due to breaches of representations and warranties in ABS transactions) and Section 945 (mandating new disclosure requirements for ABS).

We would also like to stress that the Agencies should follow SIFMA's suggested definition of "ABS Issuer" and the corresponding definition of "asset-backed security".[13] In order to ensure that "the economically essential activity of loan creation is not infringed upon" through the restriction of a banking entity's ability to securitize, these definitions need to be sufficiently robust; and we believe this would be the case if the Agencies follow SIMFA's proposed definitions.[14]

(a) ***Intermediate and ancillary entities involved in securitization transactions should be excluded from the definition of Covered Fund*** *(Response to Questions 297 and 301 of the Proposed Rules)*

We wish to also highlight, that any exclusion of ABS Issuer from the definition of Covered Fund should take into account any intermediate or ancillary entities involved in the process of securitizing financial assets with such ABS Issuer. For example, it is possible that a securitization structure will involve an intermediate or ancillary entity that does not issue an "asset-backed security", but may otherwise issue a "security" (as defined in the 1940 Act) that requires such entity to obtain an exemption from the 1940 Act. As with the ABS Issuer, these entities should not be deemed to be a Covered Fund.[15]

For example, in UK Master Trust securitization structures there are a number of entities involved in the securitization process.[16] Each of these

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[13] SIFMA Securitization Letter, Part I, footnote 3 (defining "**asset-backed security**" to mean "a fixed-income or other security collateralized by any type of financial asset (including a loan or other extension of credit referred to herein, a lease, a mortgage, or a secured or unsecured receivable) that allows the holders of the security to receive payments that depend on the cash flow from the asset, and also includes asset-backed commercial paper and synthetic asset-backed securities. The definition is also intended to cover securities issued by so-called "repack" special purpose vehicles, which issue asset-backed securities that may be exposed primarily to corporate debt assets, but may be collateralized (directly or indirectly) by commercial real estate or corporate loan assets or certain nonfinancial assets such as aircraft, storage containers, equipment or other hard assets.").

[14] Financial Stability Oversight Council, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships With Hedge Funds and Private Equity Funds (January 2011), at 47. (The FSOC further emphasizes that "[t]he creation and securitization of loans is a basic and critical mechanism for capital formation and distribution of risk in the banking system. While these activities involve the assumption of principal risk, the broader benefits to the economy reflect the intent of federal borrowing subsidies and protections.").

[15] See, e.g., SIFMA Securitization Letter, Part IV.A, footnotes 51 and 52 (discussing titling trusts used in auto lease securitizations and asset-backed commercial paper conduits).

[16] This is also exemplified in a number of other asset classes securitized in the UK and other non-U.S. jurisdictions, including for example, credit card receivables and consumer loans.

entities will typically, or due to the Non-US Issuer Inclusion would be required to, determine the appropriate exemption from the 1940 Act. If the relationship between any such entity is not captured by the final definition of an ABS Issuer, such entity should still be excluded from the definition of Covered Fund to ensure that banking entities are not inappropriately limited or restricted from engaging in such securitization structures involving an ABS Issuer that is otherwise excluded from the definition of Covered Fund.[17]

(b) ***Entities used in core funding structures of non-U.S. banking entities should be excluded from the definition of Covered Fund*** *(Further Response to Question 225 of the Proposed Rules)*

Finally, we encourage the Agencies to consider the effect of the Volcker Rule on core funding products used by non-U.S. banking entities that are not asset-backed securities, but may make use of entities that rely, or under the Non-US Issuer Inclusion may hypothetically need to rely, upon the 3(c)(1) or 3(c)(7) exemption to the 1940 Act.

Covered bonds, for example, represent a significant funding source in Europe. Covered bonds are full recourse debt instruments typically issued by a credit institution that are fully secured or "covered" by a pool of high-quality on balance sheet collateral (e.g. residential or commercial loans or public sector loans); they are therefore fundamentally different in nature to traditional asset-backed securities.

In a number of covered bond structures used throughout Europe a special purpose entity is set up (often as a subsidiary of a bank issuer) to hold the "covered pool" as security for a guarantee in favor of the covered bondholders. While these arrangements are very different from those targeted by the Proposed Rule, under the current proposals, it is not sufficiently clear that these special purpose entities would be outside the definitional scope of a Covered Fund in all relevant circumstances.

Covered bonds are commonly used outside of the United States to fund types of financial assets, such as residential mortgage loans, that in the United States are often funded through securitization. We, therefore, believe that the Agencies should give due consideration to the effect of the Volcker Rule on covered bond structures in light of Congress' intent to

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[17] See Question 301 of the Proposed Rules. In response to this specific question, we believe that an ABS Issuer, together with any intermediary or ancillary entities involved in the securitization process, should be treated as being involved in a single securitization transaction that benefits from an exclusion from the definition of Covered Fund, in addition to any loan securitization exclusion. We believe this is the most efficient and appropriate manner by which to treat a securitization transaction for purposes of the Volcker Rule. Treating an ABS Issuer and any intermediary or ancillary entities as a single transaction avoids the need to perform a separate analysis and provides legal certainty for each entity involved in the transaction.

exempt from the Volcker Rule activity essential to the core lending function of banking entities as exemplified by the Securitization Exemption and various other provisions.[18]

The exact content of any such exclusion is not within the scope of this letter, so we encourage the Agencies to review the letter of the UK Regulated Covered Bond Council addressing the effect of the Volcker Rule on covered bonds.

2. Requested changes if ABS Issuers are treated as Covered Funds and additional comments

Parts IV through IX of the SIFMA Securitization Letter set forth a number of suggested changes to the Proposed Rules if the Agencies do not exclude ABS Issuers from the definition of Covered Fund. Although, as highlighted above, we strongly believe the appropriate action of the Agencies is to exclude ABS Issuers from their definition of a Covered Fund, we also fully support SIFMA's arguments that, if ABS Issuers are not excluded, then other changes need to be made. Specifically, if ABS Issuers are not excluded from the definition of Covered Fund, we agree with SIFMA that:

- Both ABS Issuers and ILS Issuers should be exempted from the Ownership Restrictions;[19]

- In order to ensure that the Volcker Rule does not contravene the Securitization Exclusion's clear mandate not to "limit" or "restrict" a banking entity's ability to securitize, Super 23A should not apply to transactions between banking entities and ABS Issuers or ILS Issuers that are excluded from the Ownership Restrictions;[20]

- The Proposed Rules should exclude ABS, whether having either formal or economic characteristics of debt or equity, from the definition of "ownership interest"; and the definition of "sponsor" should not be expanded to include the entities contemplated by the definition of sponsor under Regulation AB;[21] and

- In order to avoid significant market disruption the Agencies should exempt banking entities' sponsorship, ownership or other relationships

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[18] See e.g., Proposed Rules, Section .3(b)(3)(ii)(A) (excluding "loans" from the restrictions on proprietary trading).

[19] SIFMA Securitization Letter, Part V.

[20] SIFMA Securitization Letter, Part VI.

[21] SIFMA Securitization Letter, Part VII.

with ABS Issuers in existence as on the effective date of the Proposed Rules.[22]

Additionally, Parts X through XIII of the SIFMA Securitization Letter set forth several comments, which we fully support, that exist regardless of whether ABS Issuers are excluded from the definition of Covered Fund. Specifically, we agree with SIFMA that:

- Any ABS Issuer (including any intermediate or ancillary entity involved in the related securitization process), ILS Issuer or any other entity relying on an exemption from the 1940 Act other than Sections 3(c)(1) or 3(c)(7) that is an affiliate of a bank should be excluded from the definition of "banking entity" as set out in the Proposed Rules; [23]

- Any ABS transaction that satisfies the conflict of interest rules for securitization transactions as proposed by the SEC pursuant to Rule 127B, as amended by the suggestions in SIFMA's and our comment letter to the SEC, should be deemed to satisfy any applicable conflict of interest provisions of the Volcker Rule; [24]

- The definition of "covered financial position" should not include any "asset-backed security" that is eligible for any loan securitization exemption; [25] and

- The Proposed Rules should make clear that transactions that are incidental to securitizations do not constitute impermissible proprietary trading.[26]

With respect to the above points, our members do not have further comments to those made in the SIFMA Securitization Letter. In relation to the other comments made in the SIFMA Securitization Letter, we would like to add the following in support of SIFMA's positions:

(a) ***Modifications should be made to the proposed "loan securitization exemptions"*** *(Response to Questions 296 and 301 of the Proposed Rules)*

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[22] SIFMA Securitization Letter, Part IX.

[23] SIFMA Securitization Letter, Part X.

[24] SIFMA Securitization Letter, Part XI. SIFMA previously submitted to the SEC a comment letter dated December 10, 2010 relating to Section 27B of the Securities Act in advance of proposed Rule 127B and SIFMA is submitting comments on proposed Rule 127B in a separate comment letter.

[25] SIFMA Securitization Letter, Part XII.

[26] SIFMA Securitization Letter, Part XIII.

In the event that the Agencies do not exclude ABS Issuers from the definition of Covered Fund, our members support SIFMA's comments to the contemplated loan securitization exemptions, including the suggested modifications to the definitions of "loan" and "asset-backed security", the inclusion of synthetic asset-backed securities in any loan securitization exemption, and the derivatives that may be used, and the other assets that may be owned, by an ABS Issuer covered by any loan securitization exemption.

We wish to also note, that any such changes should be sufficiently broad to ensure that any intermediate "asset-backed securities", and any intermediate or ancillary entities involved in the securitization process with an ABS Issuer are captured in the final rules establishing the loan securitization exemptions.

(b) ***Modifications to the "risk retention exemption"*** *(Response to Question 302 of the Proposed Rules)*

We fully support SIFMA's suggested modifications to the exemption set forth in Section .14(a)(2)(iii) of the Proposed Rules (the "**risk retention exemption**") to permit, in addition to risk retention required to be maintained under the Dodd-Frank Act, risk retention retained under any other law or regulation, and to allow for the retention of more than the minimum required risk retention.

Our members would like to reiterate the importance for including risk retention requirements under other laws, such as Article 122a of the European Capital Requirements Directive which applies to European credit institutions,[27] in any risk retention exemption. In Europe, in addition to Article 122a, corresponding rules will apply to other types of European regulated investors, such as insurance companies, investment banks and regulated investment funds.[28]

In general, the European risk retention rules require economic risk retention by the originator, sponsor or original lender as a condition to investment by the regulated investor, not as a direct mandate to the originator, sponsor or original lender. Therefore, the risk retention exemption needs to be broad enough to include these requirements.

(c) ***ABS Issuers and ILS Issuers should be excluded from reporting requirements*** *(Response to Questions 338 through 341 of the Proposed Rules)*

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[27] Directive 2006/48/EC, as amended by Directive 2009/111/EC.

[28] See, e.g., Directive 2009/138/EC Article 135(2) (insurance and reinsurance undertakings), Directive 2011/61/EU Article 17 (alternative investment fund managers), Article 65 (amending Directive 2009/65/EC (Undertakings for Collective Investment in Transferrable Securities)). These Directives require the European Commission to publish "implementing measures" to implement concepts similar to those in Article 122a, but the implementing measures have not yet been released.

We fully agree with SIFMA that, if ABS Issuers are not excluded from the definition of Covered Fund, the reporting and compliance requirements of the Proposed Rules nonetheless should not apply to ABS Issuers. These requirements are designed for dealings with private equity funds and hedge funds, not ABS Issuers, and would therefore add unnecessary burden and cost to the securitization process in contradiction to the clear purpose of the Securitization Exclusion.

To the extent that the Agencies to do not follow this approach, we believe the compliance and reporting requirements should be significantly curtailed for non-U.S. banks having relationships with ABS Issuers. Specifically, we believe the reporting and compliance requirements of the Proposed Rules should be revised to (a) limit the geographic scope, (b) clarify the requirements for non-U.S. banks having relationships with ABS Issuers, and (c) provide for an extended compliance period for non-U.S. banks.

(i) The geographic scope of the reporting and compliance requirements should be limited

If ABS Issuers are not otherwise exempt from the reporting and compliance requirements for activity with Covered Funds, we do not believe it is appropriate for these requirements to apply to activity between a non-U.S. bank (or a non-U.S. subsidiary of a U.S. bank) and any ABS Issuer. Furthermore, we do not believe that such activity should be included in the calculations used to determine when the increased compliance standards must be implemented.[29]

The reporting and compliance requirements for activity with Covered Funds are onerous, complex and costly, which could significantly limit non-U.S. banks' ability to securitize their assets. We believe this is not in accordance with the intended effect of the Securitization Exclusion, and would represent an unprecedented expansion of U.S. regulators' supervisory authority into the local jurisdiction of non-U.S. banks. Further, we do not believe the extension of such authority is warranted by the underlying purpose of the Volcker Rule to promote the safety and soundness of U.S. financial institutions.

Where a non-U.S. bank is subject to its home-country's prudential regulation, expanding the reporting and compliance requirements for activity with ABS Issuers would be inconsistent with longstanding principles of international comity and deference to home country regulators. It is also possible that the reporting and compliance requirements could themselves run afoul of confidentiality laws of the home jurisdiction of the non-U.S. banks.

(ii) The reporting and compliance requirements for non-U.S. banks should be clarified

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[29] Proposed Rules, Section .20(c).

We believe that further clarity is necessary regarding both the scope and detail of the reporting and compliance requirements. The lack of clarity and the potential impact on ABS transactions could lead non-U.S. banks to avoid ABS transactions altogether in order to escape the burdens of the reporting and compliance requirements. Additionally, non-U.S. banks have their own reporting and compliance requirements in their home jurisdiction, which could cause unnecessary duplication. We, therefore, request that the Agencies provide further clarification on the scope as requested above and detail necessary for non-U.S. banks engaging in activity with ABS Issuers.

In clarifying the reporting and compliance requirements as they apply to non-U.S. banks, we strongly urge the Agencies to engage in substantive dialogue with individual banking entities and industry groups with respect to these requirements.

(iii) The timeline for compliance with reporting and compliance requirements of the Volcker Rule should be extended beyond its effective date

The effective date of the Volcker Rule is July 21, 2012, and the Proposed Rules suggest that banking entities will need to implement a compliance program for activity with Covered Funds as of that date. We do not believe this provides sufficient time to implement the reporting and compliance requirements, especially for non-U.S. banks.

In order to implement the compliance program envisioned in the Proposed Rules, banking entities must undergo extensive processes, such as modifying their information and record-keeping systems, obtaining internal approvals, educating and training their employees, and engaging third-party service providers.[30] Furthermore, as we note above, the reporting and compliance requirements remain unclear, which makes it impractical for non-U.S. banks to begin implementation of their compliance programs at this time.

Therefore, we strongly urge the Agencies to take full advantage of the two-year compliance period beginning on the effective date to allow non-U.S. banks to bring their practices into compliance.

Part II – Additional Comments to the SIFMA Securitization Letter

As we noted earlier, we believe that the extraterritorial reach of the Proposed Rules is inconsistent with the plain language of the Dodd-Frank Act, congressional intent, the Volcker Rule's policy objectives, and the Agencies' longstanding principals of international comity with non-U.S. regulators.

[30] Proposed Rules, Section .20(b).

Without modifications, the Proposed Rule would have significant adverse and unintended consequences for Non-US ABS Issuers and non-U.S. banks engaging in securitization activities. The Volcker Rule was designed to protect the safety and soundness of U.S. banks and the stability of the U.S. financial system,[31] rather than regulate the activity of non-U.S. banks (other than their branches or affiliate banking entities in the U.S.).

Therefore, we strongly request the Agencies to consider our responses below in regards to the extraterritorial application of the Volcker Rule to non-U.S. banks and their activities with ABS Issuers.

1. ***The Non-US Issuer Inclusion is overly broad*** *(Response to Questions 221 through 224 of the Proposed Rules)*

In the Proposed Rules, the Agencies used their authority under the Volcker Rule to expand the statutory definitions of "private equity fund" and "hedge fund" by adding the Non-US Issuer Inclusion to the definition of Covered Fund. As we previously noted, the Non-US Issuer Inclusion would deem any Non-US ABS Issuer (or any other entity) to be a "foreign equivalent" Covered Fund if such Non-US ABS Issuer (or other entity) would be required to rely on Section 3(c)(1) or 3(c)(7) to be exempt from the 1940 Act if it were organized under the laws, or offered securities to a resident, of the United States.

As a consequence, the Non-US Issuer Inclusion will have broad extraterritorial effects on Non-US ABS Issuers even where there is little or no nexus with the United States. Such a broad reach will undermine securitization outside the United States, and frustrate global efforts to re-establish sustainable securitization markets following the credit crisis, without an equivalent benefit to the safety and soundness of the U.S. financial system.[32]

We strongly believe that Congress did not intend the Volcker Rule to be interpreted to capture such a broad range of entities, including Non-US ABS Issuers, that do not have characteristics of traditional hedge funds and private equity funds.

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[31] See e.g., the FSOC Study (stating that "[t]he Volcker Rule prohibits banking entities, which benefit from federal insurance on customer deposits or access to the discount window, from engaging in proprietary trading and [covered fund activities], subject to certain exceptions.").

[32] The Joint Forum, Basel Committee on Banking Supervision, Report on Asset Securitization Incentives (July 2011); *see also* Financial Stability Board, Progress Since the Washington Summit in the Implementation of the G20 Recommendations for Strengthening Financial Stability – Report of the Financial Stability Board to G20 Leaders (Nov. 2010). (Stating that "re-establishing securitization on a sound basis remains a priority in order to support provision of credit to the real economy and improve banks' access to funding in many jurisdictions.")

Therefore, for the reasons we discuss above, we find the extraterritorial reach of the Non-US Issuer Inclusion very troublesome, and believe the Agencies should remove it from the definition of Covered Fund.

Alternatively, should the Agencies retain the Non-US Issuer Inclusion, we believe it is essential that its definitional scope is substantially limited in its extraterritorial reach. Specifically, we would urge the Agencies to redefine the Non-US Issuer Inclusion so that it is based on specified characteristics typical of private equity and hedge funds.[33] As the Agencies have done in implementing other regulations under the Dodd-Frank Act, it is imperative that these specified characteristics clearly distinguish Non-US ABS Issuers and other entities from typical private equity and hedge funds.[34]

2. The Non-US Exclusions of the Proposed Rules are too narrow

The Non-US Exclusions to the proprietary trading and the Ownership Restriction clearly demonstrate Congress' intent to limit the scope of the extraterritorial impact of the Volcker Rule by exempting non-U.S. banks engaging in certain transactions that occur solely outside of the United States.[35] However, we believe the Non-US Exclusions as carried over into the Proposed Rules do not go far enough to support this and their potential adverse impact on Non-US ABS Issuers. Therefore, we encourage the Agencies to amend the Non-US Exclusions as we suggest in the remainder of this section.

(a) ***The Agencies should amend the definition of "resident of the United States" to match the definition of "U.S. Person" in Regulation S*** *(Response to Question 295 of the Proposed Rules)*

One requirement for the Non-US Exclusion from the Ownership Restriction is that no "ownership interest" in a Covered Fund is permitted to be offered or sold to a "resident of the United States".[36] In defining "resident of the United States" for this purpose the Agencies relied on the definition of "U.S. Person" in Regulation S of the Securities Act of 1933. We fully agree that this is the correct starting point for this definition as Regulation S and the definition of "U.S. Person" are well understood by non-U.S. market participants.

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[33] See e.g., the characteristics suggested in Questions 223 and 224 of the preamble to the Proposed Rules.

[34] See e.g., Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71, 128 (Nov. 16, 2011) (establishing distinct definitions for "private equity funds" and "hedge funds" and explicitly excluding "securitized asset funds" from such definitions).

[35] Proposed Rules, Sections .6(d)(3)(iii) and .13(c)(3)(iii).

[36] Proposed Rules, Section .13(c)(3)(iii).

However, we believe the definition should follow the definition of "U.S. Person" entirely. Therefore, we do not agree with the Proposed Rules modifications to the Regulation S definition to cover U.S. persons who are not U.S. residents and certain U.S. residents acting on behalf of non-U.S. resident customers. Moreover, a fundamental element of the definition of "U.S. Person" under Regulation S is the explicit exclusions from that definition set out in Rule 902(k)(2). We believe the Agencies should also incorporate these exclusions into the definition of "resident of the United States." If the definition of "resident of the United States" does not follow the definition of "U.S. Person", we believe ABS transactions that would otherwise be permissible under existing law may not go forward.

(b) ***An exclusion similar to the Non-US Exclusions for proprietary trading and the Ownership Restriction should be made with respect to Super 23A*** *(Response to Question 291 of the Proposed Rules)*

One significant shortcoming of the Non-US Exclusions is that there is not a corresponding exclusion with respect to Super 23A. This could have significant prohibitive consequences for non-U.S. banks looking to securitize financial assets solely outside of the U.S. If a non-U.S. bank is captured by the definition of "banking entity" solely on the basis that it is an affiliate of a U.S. bank or a non-U.S. bank with a U.S. branch, it could be limited by Super 23A in its ability to engage in standard activity with a Non-US ABS Issuer in a transaction occurring solely outside of the United States. Such an outcome would render the Non-US Exclusions meaningless, and non-U.S. banks could be prevented from securitizing their financial assets. Therefore, in the final rules, the Agencies should ensure that an exclusion similar to the Non-US Exclusions is made for Super 23A.

Conclusion

We concur with SIFMA's position that ABS Issuers should be excluded from the Agencies' definition of Covered Fund. If the Agencies do not follow SIFMA's position, then we believe there are a number of changes that would need to be made to the Proposed Rules in order to effectuate the purpose of the Securitization Exclusion. Finally, we are very concerned that the extraterritorial reach of the Proposed Rules will have a significant adverse impact on Non-US ABS Issuers and the global securitization market. We therefore encourage the Agencies to address the points raised in this letter and the SIFMA Securitization Letter.

Thank you for soliciting our comments as part of your Proposed Rules. We would be pleased to assist the Agencies further if required. In particular, if you have any questions or desire additional information regarding any of the comments set out above please do not hesitate to contact Richard Hopkin on + 44 207 743 9375 or by email at richard.hopkin@afme.eu, Nicholas de Boursac on +852 2537 3895 or by email at nboursac@asifma.org, or Ruari Ewing on +44 20 7213 0316 or by email at ruari.ewing@icmagroup.org.

Yours sincerely,

Richard Hopkin	Nicholas de Boursac	Ruari Ewing
Managing Director, Association for Financial Markets in Europe	Chief Executive Officer, Asia Securities Industry & Financial Markets Association	Director, Primary Markets International Capital Market Association

Annex

The Association for Financial Markets in Europe

The Association for Financial Markets in Europe ("**AFME**") represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association ("**SIFMA**"). AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the U.S. Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website, www.afme.eu.

The Asia Securities Industry & Financial Markets Association

The Asia Securities Industry & Financial Markets Association ("**ASIFMA**") is an independent association that promotes the development of liquid, efficient and transparent capital markets in Asia and facilitates their orderly integration into the global financial system. ASIFMA priorities are driven by over 40 member companies involved in Asian capital markets, including global and regional banks, securities dealers, brokers, asset managers, credit rating agencies, law firms, trading and analytic platforms, and clearance and settlement providers. ASIFMA is located in Hong Kong and works closely with global alliance partners: the Global Financial Markets Association (GFMA), the Securities Industry and Financial Markets Association (SIFMA) and the Association for Financial Markets in Europe (AFME). More information about ASIFMA can be found at: www.asifma.org.

The International Capital Market Association

The International Capital Market Association ("**ICMA**") represents financial institutions active in the international capital market worldwide and has members located in 50 countries. Its market conventions and standards have been the pillars of the international debt market for over 40 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments. See: www.icmagroup.org.