# MBCA

MID-SIZE BANK COALITION OF AMERICA



February 10, 2012

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
RIN 3064-AD85

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, D.C. 20219
Docket ID OCC-2011-14

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551
Docket No. R-1432 and RIN 7100 AD 82

Regarding: Request for Public Comment on Notice of Proposed Rulemaking Implementing the Provisions of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Concerning Restrictions on Proprietary Trading and Certain Interests in and Relationships with, Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

The Mid-size Bank Coalition of America (MBCA) appreciates the opportunity to comment on the Volcker Rule proposal issued by each of your Agencies.

By way of background, the MBCA is a non-partisan financial and economic policy organization comprising the CEOs of mid-size banks doing business in the United States. Founded in 2010, the MBCA, with now 28 members, was formed for the purpose of providing the perspectives of mid-size banks on financial regulatory reform to regulators and legislators.

As a group, the MBCA banks do business through more than 3,800 branches in 41 states, Washington D.C. and three U.S. territories. Our members' combined assets exceed $450 billion (ranging in size from $7 to $30 billion) and, together, its members employ approximately77,000 people. Our member institutions hold nearly $336 billion in deposits and total loans of more than $260 billion.

Our institutions operate in between the large, money center banks and the small community banks. Since the Dodd-Frank Act often distinguishes between financial institutions by size, we often find that our institutions fall between the community banks that are exempted from certain regulatory obligations and the largest institutions that can absorb the increased regulatory burden and spread the cost over an enormous asset base. Banks of our size, between $10 billion and $30 billion in asset size, are therefore competitively harmed by the planned regulatory scheme – neither exempted nor enormous.

Here, we write about the burden imposed by the regulatory scheme that would be implemented by the current proposal. Most of our institutions do not engage in "proprietary trading" as that term is commonly understood or used. We do not engage in any of the activities that Congress sought to constrain in passing the proprietary trading provisions of the Dodd-Frank Act. We run no proprietary trading desk; employees are not compensated or incentivized to make trades (risky or not) for the benefit of a company account. Moreover, by definition we do not present a systemic risk to the economy. If we fail, we will be responsible for any "proprietary trades" we make, and we will not expect or receive a bailout from the federal government.

The problem is that the current proposal treats all institutions as though they conduct proprietary trading and puts the burden on the institution to prove it does not conduct those trades. This "guilty until proven innocent" approach will impose substantial costs for all institutions, but those costs will be most spread out and borne most easily by the largest institutions. It is the mid-size institutions that will bear the brunt of the compliance burden. The proposed tiering of the Rule's obligations based on volume recognizes the problems but does not provide a solution. The continuing obligation to identify any potential trades that fall within a very broad definition of "proprietary" and the obligation to demonstrate trades or other business operations fit within one of the identified exceptions will be a cumbersome and costly process. Institutions will have to evaluate and revise operations and systems and will have to expand compliance programs, even if they do not conduct any covered trades. For example, most institutions provide foreign exchange services for our clients, and this proposal will complicate operations and information technology systems in order to prove compliance.

Moreover, the broad definition given to the term proprietary trading will create uncertainty that will unnecessarily chill perfectly appropriate commercial activity. The end result of this regulatory process will be to artificially increase competitive advantages for larger institutions. Mid-size institutions will face disproportionate regulatory burdens as we challenge larger banks in the marketplace. The added cost to mid-size institutions of this regulatory burden cannot be justified by any benefit to investors, consumers or the tax payer.

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In addition to the size and discriminatory effect of the regulatory burden of the proposal, the proposed rule does not provide enough time for banking entities to properly meet the various requirements of the Volcker Rule. Banks of any size, but particularly mid-size institutions cannot implement a sufficient compliance program in the time contemplated by the proposed rule. Among other things, entities cannot begin to develop and implement an effective compliance program until the Agencies issue a final rule.

The Dodd-Frank Act itself recognizes the necessity of time to permit banking entities to come into compliance with the many changes imposed by the Volcker Rule. The Act explicitly provided a two year transition time from the effective date to the date when entities must be in compliance with the substantive provisions of the Rule[1] and established a separate conformance period rulemaking process designed to permit the Agencies to extend this period of time needed to come into compliance for up to another three years. The current proposal requires entities to have a compliance program in place on July 21, 2012. Not only is this inconsistent with the intent of the Dodd-Frank Act, it is simply impracticable. This is particularly true here because a final rule is unlikely to issue with sufficient time before the July 21 deadline. The Agencies asked over 1,300 individual questions seeking public comment on different aspects of the proposal, and many substantive comments are expected.
In response to Questions 1 through 4, the proposal does not provide sufficient time to meet the rule's substantive, recordkeeping or compliance obligations. Compliance obligations should be required only after a final rule is issued, and the obligations should then be phased in on a schedule that considers the cost and benefit of each compliance requirement.

We thank you again for the opportunity to comment on the Release and appreciate your willingness to consider our suggestions.

Yours Truly,

Russell Goldsmith
Chairman, Midsize Bank Coalition of America
Chairman and CEO, City National Bank

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[1] 12 U.S.C. § 1851(c)(2)

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Mr. Daryl Byrd, IBERIABANK
Mr. Carl Chaney, Hancock Bank
Mr. William Cooper, TCF Financial Corp.
Mr. Raymond Davis, Umpqua Bank
Mr. Dick Evans, Frost National Bank
Mr. Mitch Feiger, MB Financial, Inc.
Mr. Philip Flynn, Associated Bank
Mr. Paul Greig, FirstMerit Corp.
Mr. John Hairston, Hancock Bank
Mr. Richard Hickson, Trustmark Corp.
Mr. Peter Ho, Bank of Hawaii
Mr. John Hope, Whitney Holding Corp.
Mr. Robert Harrison, First Hawaii Bank
Mr. John Ikard, FirstBank Holding Company
Mr. Bob Jones, Old National
Mr. Bryan Jordan, First Horizon National Corp.
Mr. David Kemper, Commerce Bancshares, Inc.
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Mr. Gerald Lipkin, Valley National Bank
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