



New York  
Community Bank

Member FDIC

615 MERRICK AVENUE, WESTBURY, NY 11590

October 16, 2018

VIA EMAIL

Legislative and Regulatory Activities Division  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Suite 3E-218, Mail Stop 9W-11  
Washington, DC 20219

Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Ann E. Misback  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Christopher Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Robert E. Feldman  
Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

RE: Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds – Docket No. OCC-2018-0010 (OCC); Docket No. R-1608 (Federal Reserve); RIN 3064-AE67 (FDIC); File Number S7-14-18 (SEC); RIN 3038-AE72 (CFTC)

Ladies and Gentlemen:

Thank you for the opportunity to provide comments to the five federal regulatory agencies (the “Agencies”) responsible for issuing the regulations that implement Section 619 of the Dodd-Frank Act, codified as Section 13 of the Bank Holding Company Act of 1956, as amended (the “Volcker Rule”).<sup>1</sup> The Agencies are soliciting public comment on proposed amendments to the Regulation (the “Proposal”) that are intended to clarify, simplify, and tailor the Rule’s regulatory requirements. As a regional bank, we appreciate the Agencies’ efforts to streamline the compliance burdens related to the Volcker Rule and align such requirements to the

---

<sup>1</sup> Such regulations, including those codified by the FDIC at 12 CFR Part 351 (*Proprietary Trading and Certain Interests In and Relationships with Covered Funds*), are referred to herein as the “Regulation.”

nature and scope of a financial institution's trading activity. However, we believe, as further discussed below, the Proposal's inclusion of the new accounting prong (the "*Accounting Prong*") will have the unintended consequence of limiting the flexibility of a financial institution to utilize a standard securities portfolio as part of its core asset management and lending business. The Agencies propose to modify the definition of *Trading Account*, a threshold term for determining whether the Regulations apply, to include "any account that is used by a banking entity to . . . purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards." (Section \_\_\_\_\_.3 of the Regulation as currently adopted). As discussed below, this change would significantly burden institutions like us who would become subject to the Volcker Rule restrictions on proprietary trading in accounts that were never intended to be covered by the Rule.

In Section III.B.1.b. of the Proposal, you have posed Question 26 – "Is the proposal's inclusion of available-for-sale securities under the proposed accounting prong appropriate? Why or why not?" We most strongly feel that it is inappropriate to extend the Accounting Prong to available-for-sale securities.

The Volcker Rule's prohibition of short-term proprietary trading is articulated fundamentally in the Regulation's definition of a "trading account." The existing Regulation maintains a three pronged definition for the term, including (i) the short-term "intent" prong, generally prohibiting the sale of financial instruments principally for the purpose of short-term resale; (ii) the "market risk capital" prong, applying to the purchase or sale of financial instruments that are both market risk capital rule covered positions and trading positions; and (iii) the "dealer" prong, applying to the purchase and sale of financial instruments that would require a financial institution to be licensed or registered in order to conduct the transaction. Our institution's securities trading activity includes purchases of debt instruments that are intended to be a part of our investment portfolio without the commitment to hold to maturity, and under the Regulation as currently adopted such transactions are not subject to any of three prongs. Modification of the short term intent prong would reverse this.

The Proposal would retain the "market risk capital" and "dealer" prongs and replace the short-term "intent" prong with a prong based on the accounting designation of a position, or the Accounting Prong. The Accounting Prong would provide that a trading account includes any account used by a banking entity to buy or sell one or more financial instruments that is recorded at fair value on a recurring basis under applicable accounting standards, and would generally cover derivatives, trading securities, and available-for-sale securities.

Although we acknowledge and commend the Agencies' attempt to eliminate the subjective nature of short term "intent" prong, we believe the Accounting Prong, while apparently intended to provide greater clarity and objectivity, will be significantly broader and more burdensome than intended. In the Proposal's current form, the Accounting Prong effectively prevents a financial institution from booking any Non-Government issued products as available-for-sale. Existing accounting rule standards mandate that securities be classified into one of three categories: held-to-maturity, trading, or available-for-sale. The available-for-sale classification functions as a designation for securities that are neither intended to be sold in the immediate term nor committed to be held to full maturity. As a result, debt instruments that are

October 16, 2018

Page 3

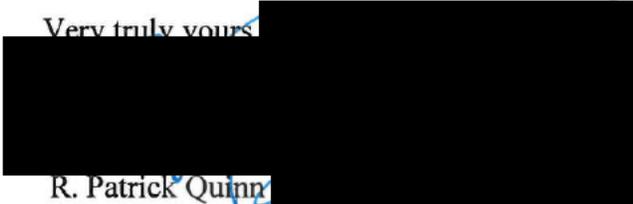
intended to be a part of an investment portfolio without the commitment to hold to maturity would be in violation of the Volcker rule, as they would fall into the currently proposed Accounting Prong absent existing exemptions from proprietary trading.

New York Community Bank, like many regional banks, utilizes our investment securities portfolio as an alternative means to deploy capital in response to shifts in loan demand. When demand increases, the Bank is able to divest of investment securities and inject the capital back into our principal business, which is to lend within our community. The availability of the investment portfolio for this purpose supports our lending and capital management activities, providing relief in times of reduced loan demand and allowing critical flexibility to grow or contract the lending business depending on market circumstances. The introduction of the Accounting Prong would deprive financial institutions of this vital relief valve and significantly hamper capital management flexibility.

As of June 30, 2018, available-for-sale securities comprised almost 10% of our balance sheet. More than 20% of those securities would suddenly be prohibited by the Proposal. As a result, financial institutions such as ours would be required to reclassify these products as held-to-maturity, which would significantly diminish their balance sheet flexibility and restrict their ability to prudently manage their investment portfolios. We urge you not to change the current definition of Trading Account under the existing Regulation by implementing the proposed new Accounting Prong.

Thank you again for the opportunity to provide comment as you formalize the Proposal. If you have any questions or concerns, please feel free to contact me directly.

Very truly yours,

  
R. Patrick Quinn  
*Executive Vice President  
Chief Corporate Governance Officer &  
Corporate Secretary*

cc: Joseph R. Ficalora  
*President & Chief Executive Officer*

Thomas Cangemi  
*Senior Executive Vice President & Chief Financial  
Officer*

John Pinto  
*Executive Vice President & Chief Accounting  
Officer*