INSTITUTE OF INTERNATIONAL BANKERS

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Direct: (646) 213-1147
Facsimile: (212) 421-1119
Main: (212) 421-1611
www.iib.org

Briget Polichene
Chief Executive Officer
E-mail: bpolichene@iib.org

July 26, 2019

By Electronic Mail

Mark van der Weide
General Counsel
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Approaches and Authorities for Addressing the Treatment of Foreign Excluded Funds as Banking Entities under the Volcker Rule: Federal Reserve Docket No. R-1608 and RIN 7100-AF 06, OCC Docket No. OCC-2018-0010 and RIN 1557-AE27, FDIC RIN 3064-AE67, SEC File no. S7-14-18 and RIN 3235-AM10, and CFTC RIN 3038-AE72

Dear Mark:

I am writing to follow up on a question raised during our meeting on May 6, 2019, between representatives of the Institute of International Bankers ("IIB")[1] and staff of the Legal Division of the Board of Governors of the Federal Reserve System (the "Board"). At that meeting, we discussed approaches and authorities available to the Board and the other rulemaking agencies[2] to address issues raised by the treatment of foreign funds offered and sold solely outside the United States and controlled by a non-U.S. banking entity ("foreign excluded funds") under Section 13 of the Bank Holding Company Act of 1956, as amended (the "BHCA"), commonly known as the Volcker Rule.[3] As we indicated in that meeting, the scope and substance of the temporary relief provided in the July 2017 policy statement (and extended most recently on July 17, 2019) regarding the treatment of foreign excluded funds under the 2013 Rule has been effective to date in addressing these issues.[4] However, permanent relief is needed to

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1 The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches and agencies, bank subsidiaries and broker-dealer subsidiaries in the United States.

2 In this letter, we refer to the Board, the Office of Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Securities and Exchange Commission and the Commodity Futures Trading Commission collectively as the "Agencies."

3 Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5536 (Jan. 31, 2014) (the "2013 Rule").

4 Board, FDIC and OCC Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017) (the "2017 Foreign Fund Guidance"). See also Board, FDIC and OCC Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing

provide clarity and certainty regarding the treatment of foreign excluded funds moving forward and to permit foreign banking organizations to carry on ordinary asset management businesses outside the United States.

Further to a question raised at our meeting, this letter discusses potential approaches for making the substance of the relief in the Foreign Fund Guidance permanent and the Agencies' authority for adopting such relief in a new final rule based on Sections 13(d)(1)(H) and 13(d)(1)(I) of the BHCA. This letter also discusses the basis on which the Agencies could rely on Section 13(d)(1)(J), although we believe that this alternative is unnecessary. We believe that several of the approaches discussed in this letter could provide a simple, lasting solution to the treatment of foreign excluded funds as banking entities while avoiding unintended applications of the Volcker Rule.[5]

Banking Entity Definition Carve-Out for Foreign Excluded Funds

The Agencies could exclude foreign funds offered and sold solely outside the United States from the definition of banking entity, just as covered funds and merchant banking portfolio companies were carved out of the definition of banking entity in the 2013 Rule. A categorical exclusion from the definition of banking entity, based on the definition of "qualifying foreign excluded fund" in the Foreign Fund Guidance, would be the simplest approach for providing lasting relief for foreign funds offered and sold solely outside the United States. The Agencies have ample statutory and interpretive authority to implement a regulatory "banking entity" carve-out, as discussed further below and as evidenced by their prior actions with respect to covered funds and merchant banking portfolio companies. These entities were carved out of the definition of banking entity in the 2013 Rule to avoid an unintended consequence of applying the BHCA definitions of "affiliate" and "subsidiary" to entities that would not be able to operate as intended if they were treated as banking entities.[6]

Excluding foreign funds offered and sold solely outside the United States from the definition of banking entity would not affect the application of the separate definitions of "control" and

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Section 13 of the Bank Holding Company Act (July 17, 2019). (the "2019 Foreign Fund Guidance," together with the 2017 Foreign Fund Guidance, the "Foreign Fund Guidance").

5 Absent relief, foreign excluded funds with no U.S. connection could be subject to the Volcker Rule's prohibition on proprietary trading, while similar funds with U.S. connections would be exempt from this prohibition as covered funds carved out of the definition of banking entity. The impact of this seemingly unintended consequence is discussed in our prior submissions on this subject and acknowledged in the preamble to the Agencies' 2018 Volcker Rule proposal and in the U.S. Treasury's 2017 report on banks and credit unions pursuant to Executive Order 13772. See, e.g., IIB, Letter Regarding Joint Notice of Proposed Rulemaking Implementing Revisions to the Volcker Rule (Oct. 17, 2018) (the "IIB 2018 Comment Letter"); IIB and Securities Industry and Financial Markets Association, Letter Regarding Foreign Fund Issues Under Section 13 of the Bank Holding Company Act (May 20, 2015); Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 83 Fed. Reg. 33432, 33443-44 (July 17, 2018) (the "2018 Proposal"); Department of the Treasury Report, A Financial System that Creates Economic Opportunities: Banks and Credit Unions (June 2017) at 78 (the "Treasury Report").

6 See, e.g., 2013 Rule § ___.2(c)(2) (excluding covered funds, merchant banking portfolio companies and the FDIC acting in certain capacities, none of which was specified for exclusion by the statute).

"affiliate" under the BHCA. The carve-outs for covered funds and merchant banking holding companies did not disrupt the way these definitions are applied under the BHCA and, similarly, a carve-out for the foreign funds discussed in this letter would not disrupt the BHCA definitions. It would refine only the definition of a term specific to the Volcker Rule—banking entity—in order to implement that particular rule in a manner that is internally consistent and reflects congressional intent.

Proposed Alternative

An alternative to a new banking entity carve-out that blends elements of various approaches that have been discussed is outlined in Appendix A. This approach would add a new sub-section to Section __.13(b) of the 2013 Rule regarding certain permitted fund activities and investments outside the United States. This new sub-section would (i) lay out the criteria for a "qualifying foreign excluded fund," as currently set forth in the Foreign Fund Guidance, and (ii) provide that a fund that meets those requirements would be deemed a covered fund solely for purposes of the existing carve-out from the definition of banking entity in Section __.2(c)(2)(i) of the 2013 Rule. The proposed approach would not create a new carve-out from the banking entity definition; instead, it would deem qualifying foreign excluded funds to be covered funds for a specific purpose, appropriately aligning the treatment of these two types of funds when the protective provisions of the Foreign Fund Guidance ensuring the non-U.S. nature of their operations are met. Including the new provision in Section __.13(b) is appropriate since the section is intended to preserve the ability of foreign banking organizations to continue to conduct funds activities outside of the United States. This result is what the amended provision would achieve, in the manner intended by Congress and without the 2013 Rule's illogical result of restricting foreign funds with no U.S. connection more strictly than foreign funds that have U.S. investors. Thus, the amended Section __.13(b) would address foreign funds activities related to both covered funds (pursuant to the SOTUS exemption) and qualifying foreign excluded funds with no U.S. connection.

Other Alternatives

If the Agencies do not implement relief through one of the two approaches described above, several alternative approaches also could provide substantively comparable relief, although they create additional complexity and/or uncertainty.[7]

First, the Agencies could extend the relief provided in the Foreign Fund Guidance indefinitely, either in its current form or in a new FAQ, thus clarifying that they will not attribute the activities of a foreign excluded fund that meets the criteria in the Foreign Fund Guidance to any non-U.S.

[7] We note that certain other avenues for resolving the status of foreign excluded funds have been introduced in comment letters and other submissions to the Agencies. For example, one option could be a "presumption of compliance" with the Volcker Rule. We believe that such an approach introduces unnecessary complexity and leaves uncertainty about its application over time and questions about what circumstances could trigger a rebuttal of the presumption. However, if this were the only path the Agencies could support to make the Foreign Fund Guidance permanent, it would be critical that neither the banking entity nor the fund would have an obligation to affirmatively demonstrate ongoing compliance with the Volcker Rule, and rebuttal of the presumption be focused on preventing any deliberate evasion of the Volcker Rule's proprietary trading or covered fund prohibitions.

banking entity that controls the fund for purposes of BHCA Section 13.[8] Such action would provide relief that is substantively comparable to a clean carve-out from the definition of banking entity. In our view, however, a modification to the text of the 2013 Rule through the rulemaking process would be more appropriate and would provide a lasting solution.

Second, the Agencies could permit banking entities to elect to treat a foreign excluded fund as a covered fund ("opt-in") to avoid the consequences of being a banking entity under the Volcker Rule. The Agencies raised this approach in the 2018 Proposal to amend the Volcker Rule.[9] Under this approach, a banking entity that has elected to treat a foreign fund as a covered fund would only be permitted to invest in, sponsor, or have certain relationships with that foreign fund subject to the requirements governing relationships with covered funds. However, such a fund also then could rely on the 2013 Rule's carve-out from the banking entity definition.

In our view, this approach would be unnecessarily complex to administer and risk potential unintended consequences as a result. One potentially significant drawback is the risk that the so-called "Super 23A" provisions of the Volcker Rule[10] could be interpreted to apply in a way that would disrupt the ordinary course activities of such a foreign fund and layer compliance burdens onto the fund's operations.[11] To make the opt-in approach viable, the Agencies would need to clarify that Super 23A is subject to the same territorial limits as Section 23A of the Federal Reserve Act itself and that it does not reach transactions between a non-U.S. affiliate of a foreign banking organization and non-U.S. covered funds. Given this issue and other practical questions and uncertainties that would arise regarding implementation of the opt-in approach, we do not believe this potential solution would best effectuate a clear, simple solution that would minimize the chances of further unintended consequences.

Authority for Providing Relief, Including Under BHCA Section 13(d)(1)(J)

The Agencies have ample basis to implement one of the solutions described above in a final rule under their interpretive authority. Adopting a new exclusion or the proposed alternative above would define banking entity and apply the Volcker Rule's prohibitions and exemptions in a manner that is consistent with the clear congressional intent to limit the application of the rule to the non-U.S. fund activities of foreign banking organizations. The provision could be framed as either an interpretation of the banking entity definition or as an interpretation of the exemptions in BHCA Sections 13(d)(1)(H) and 13(d)(1)(I) for trading and investing conducted solely outside the United States.[12] It would be appropriate

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8 The Agencies took a similar approach in FAQ 14 regarding foreign public funds sponsored by a banking entity. Volcker Rule Frequently Asked Question #14, Foreign Public Funds Sponsored by Banking Entities (June 12, 2015).

9 See preamble to 2018 Proposal at 33445.

10 12 U.S.C. § 1851(f); 2013 Rule, § __.14.

11 The Agencies allude to their potential concern in the preamble to the 2018 Proposal. See preamble to 2018 Proposal at 33445 (Question 20).

12 See 12 U.S.C. §§ 1851(d)(1)(H) and (I).

We note that the Agencies appropriately relied on Section 13(d)(1)(H) of the BHCA in the 2013 Rule for authority to permit the non-U.S. affiliates of foreign banking organizations to trade with U.S. counterparties

to adopt the proposed relief as an interpretation of those statutory exemptions because the revisions address what otherwise would be internal inconsistencies between the exemption permitting foreign banking organizations to invest in, and sponsor funds outside of, the United States and the simultaneous prohibition of certain of those activities through a "back door" application of the Volcker Rule prohibitions. It also would avoid the logical inconsistency in the current implementation of the exemption that subjects non-U.S. funds with no U.S. connections to more restrictions than non-U.S. funds with some U.S. connection. We note that the Treasury Report supported an exclusion from the banking entity definition for foreign excluded funds to align the application of the Volcker Rule with longstanding principles of international bank supervision.[13]

The rationales for interpretive relief therefore should include the same rationales that justified the exclusions for covered funds and merchant banking portfolio companies, but with the added element of effectuating the extra-territorial limits set forth in Sections 13(d)(1)(H) and 13(d)(1)(I) and providing consistent treatment for similar funds.[14] The Agencies have excluded certain activities, entities and instruments from other Volcker Rule definitions or prohibitions in order to appropriately implement congressional intent.[15] Addressing this issue through interpretive authority would be equally appropriate.

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pursuant to the exemption for trading conducted solely outside the United States (the "TOTUS Exemption"). The Agencies also fashioned certain limitations under the 2013 Rule that go beyond the statutory mandate and then created counter-exceptions in reliance on Section 13(d)(1)(J). However, in proposing changes to the TOTUS Exemption in the 2018 Proposal, the Agencies did not propose to rely on the authority in Section 13(d)(1)(J), implying that they have sufficient authority under Section 13(d)(1)(H) alone to make the changes. In the preamble to the 2018 Proposal, the Agencies interpreted the word "solely" in Section 13(d)(1)(H), noting that "the relevant inquiry would focus on whether the principal risk of the transaction is located or held outside of the United States and the location of the trading decision and the banking entity acting as principal." Preamble to 2018 Proposal at 33469; see also IIB 2018 Comment Letter at 14; European Banking Federation, Comment Letter to the Agencies (Oct. 17, 2018), at 6-7.

Consistent with the Agencies' approach in the 2018 Proposal, we believe that Section 13(d)(1)(H) provides all necessary authority for the revised TOTUS Exemption. Nevertheless, if the Agencies were to determine that the authority in Section 13(d)(1)(J) would be helpful, the 2018 Proposal's changes to the TOTUS Exemption should be consistent with the statutory factors required to grant relief under Section 13(d)(1)(J). In particular, we believe that such changes should (i) benefit the safety and soundness of foreign banking organizations by limiting the uncertainty caused by the operation of U.S. regulations in the non-U.S. regulatory regimes and markets where foreign banking organizations primarily operate and (ii) protect U.S. financial stability by keeping the principal risks of proprietary trading by foreign banking organizations outside the United States while simultaneously providing for increased market liquidity and trading access for U.S. market participants, both in and outside the United States. See preamble to 2018 Proposal at 33468 (describing the proposed changes to the TOTUS Exemption); preamble to 2013 Rule at 5654.

[13] See Treasury Report at 78.

[14] In the Foreign Fund Guidance, the Agencies endorsed the principle that foreign excluded funds should be treated the same as covered funds under Section 13(d)(1)(I) by importing the requirements of that section into the "qualifying foreign excluded fund" definition.

[15] In addition to the exclusions from the banking entity definition, see, e.g., 2013 Rule § __.14(a)(2)(i) (excluding from prohibited covered transactions the acquisition of ownership interests in accordance with 2013 Rule §§ __.11, __.12, or __.13), and the exclusions from the statutory definition of covered funds to address the

In our view, relief for foreign excluded funds would be consistent with the basic prohibitions set forth in Section 13 of the BHCA. However, if the Agencies were to determine that they need further authority, they also could choose to use their authority under Section 13(d)(1)(J) to prevent the unintended application of the Volcker Rule to foreign excluded funds, as such relief should have beneficial effects on the safety and soundness of certain foreign banking entities subject to the Volcker Rule while not posing a risk to U.S. insured depository institutions or to U.S. financial stability.[16] The proposed interpretation should reduce the uncertainty created by the extraterritorial application of U.S. laws and regulations to the markets and regulatory regimes in the non-U.S. jurisdictions that are the primary focus of such banks' asset management activities. In this way, it should enable foreign banking organizations to continue to conduct their ordinary course asset management activities outside the United States without disruption, permit them to maintain desirable diversification in their activities and support their ability to attract customers by offering a full suite of services. It also should preserve foreign banking organizations' ability to manage their liquidity and risk in the manner that suits the particular commercial needs and characteristics of non-U.S. markets.[17] Furthermore, the approaches described above should ensure that the Volcker Rule is not applied to foreign excluded funds in a way that interferes with the fiduciary obligations of foreign banking organizations to investors in the foreign excluded funds that they sponsor.

The certainty provided by the requested relief should promote efficient, smoothly functioning markets and a diversity of asset management vehicles and strategies in international markets.[18] It also would preserve market expectations regarding the treatment of foreign excluded funds for purposes of the Volcker Rule, which have become increasingly settled since the Agencies released the Foreign Fund Guidance in 2017.

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overbreadth of the "default" definition based on Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940. Furthermore, in other contexts, the Board has excluded certain entities from a rule's prohibitions, even where the plain language of a statute did not call explicitly for an exclusion because providing that exclusion neither implicated any material supervisory interest nor posed a threat to safety and soundness, which the statute was designed to protect. See, e.g., Transactions Between Member Banks and Their Affiliates, 67 Fed. Reg. 76560, 76563-64 (Dec. 12, 2002) (providing exclusions from the Regulation W definition of "financial subsidiary" for (i) any subsidiary of a state bank that engages in activities that the parent state bank may engage in directly under federal law and (ii) subsidiaries of banks engaged in insurance agency activities).

16 12 U.S.C. § 1851(d)(1)(J). Cf. Financial Stability Oversight Council, Study and Recommendations on Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds, at 62 (recommending that the Agencies "carefully evaluate" the range of funds captured by the statutory reference to Sections 3(c)(1) and 3(c)(7) of the Investment Company Act and use their authority under Section 13(d)(1)(J) to narrow the statutory definition in some cases).

17 For example, in the Japanese market, due to a longstanding history of low interest rates, it is customary for banking organizations to invest surpluses and manage their balance sheet assets through investments in funds that would be covered funds if organized under U.S. law. Subjecting such funds to the Volcker Rule's proprietary trading restrictions if controlled by a Japanese banking entity subject to the Volcker Rule would interfere with the ability of foreign banking organizations to manage their assets in a way that is tailored to the unique commercial and legal considerations that they face.

18 Preamble to 2013 Rule at 5643.

At the same time, providing relief for foreign excluded funds that meet the criteria set forth in the Foreign Fund Guidance should leave U.S. insured depository institutions and U.S. financial stability protected, as any risks associated with the activities conducted by the foreign funds should remain outside the United States.[19] The relief would apply only to funds organized and established outside the United States and in which ownership interests are offered and sold solely outside the United States. Furthermore, U.S. banking entities (i.e., those that are, or are controlled directly or indirectly by, a banking entity that is located in or organized under the laws of the United States or of any state) could not invest in such funds.[20]

We note that the basis for granting relief for foreign excluded funds using the authority in Section 13(d)(1)(J) would be consistent with the rationales that the Agencies have relied on previously for the exercise of that authority, particularly in relation to the authority of foreign banking organizations to trade in the obligations of their home country sovereigns.[21] Nevertheless, reliance on the authority in Section 13(d)(1)(J) should not be required, since Sections 13(d)(1)(H) and 13(d)(1)(I) provide sufficient authority to exclude the activities conducted solely outside the United States that are described in this letter.

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[19] As the Agencies stated in the preamble to the 2013 Rule in relation to the TOTUS Exemption, "the application of . . . [the Agencies'] exemptive authority under section 13(d)(1)(J) should focus on both how the transaction occurs and which entity will bear the risk of those transactions" (emphasis added). Preamble to 2013 Rule at 5654. See also id. at 5643 (noting that permitting the U.S. operations of foreign banking organizations to engage in proprietary trading in the sovereign obligations of their home countries under Section __.6(b) of the 2013 Rule is consistent with the authority in Section 13(d)(1)(J) because, among other things, the insured depository institution subsidiaries of foreign banking organizations would not be authorized to rely on this exemption).

[20] See 2017 Foreign Fund Guidance at 2.

[21] 2013 Rule §§ __.6(b) and __.6(e); preamble to 2013 Rule at 5643-44 (noting that permitting such proprietary trading "support[s] the smooth functioning of markets in foreign sovereign obligations" and "promotes and protects the safety and soundness of banking entities and also promotes and protects the financial stability of the United States").

* * *

We appreciate your consideration of the issues raised in this letter. If we can answer any questions or provide any further information, please contact the undersigned (646-213-1147, bpolichene@iib.org) or our General Counsel, Stephanie Webster (646-213-1149, swebster@iib.org).

Very truly yours,

[redacted]

Briget Polichene
Chief Executive Officer

cc: Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation
Securities and Exchange Commission
Commodity Futures Trading Commission

Appendix

Proposed Amendments to § __.13(b) of the 2013 Rule[22]

(b) *Certain permitted ~~covered~~ fund activities and investments outside of the United States.*

(1) The prohibition contained in § __.10(a) of this subpart does not apply to the acquisition or retention of any ownership interest in, or the sponsorship of, a covered fund by a banking entity only if:

(i) The banking entity is not organized or directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States;

(ii) The activity or investment by the banking entity is pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act;

(iii) No ownership interest in the covered fund is offered for sale or sold to a resident of the United States; and

(iv) The activity or investment occurs solely outside of the United States.

(2) An activity or investment by the banking entity is pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act for purposes of paragraph (b)(1)(ii) of this section only if:

(i) The activity or investment is conducted in accordance with the requirements of this section; and

(ii)

(A) With respect to a banking entity that is a foreign banking organization, the banking entity meets the qualifying foreign banking organization requirements of section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c) or (e)), as applicable; or

(B) With respect to a banking entity that is not a foreign banking organization, the banking entity is not organized under the laws of the United States or of one or more States and the banking entity, on a fully-consolidated basis, meets at least two of the following requirements:

(1) Total assets of the banking entity held outside of the United States exceed total assets of the banking entity held in the United States;

[22] The proposed regulatory text in this Appendix does not include the changes to Section __.13(b) proposed in the 2018 Proposal. The IIB has separately endorsed those changes. See IIB 2018 Comment Letter at 32-36.

(2) Total revenues derived from the business of the banking entity outside of the United States exceed total revenues derived from the business of the banking entity in the United States; or

(3) Total net income derived from the business of the banking entity outside of the United States exceeds total net income derived from the business of the banking entity in the United States.

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is sold or has been sold pursuant to an offering that does not target residents of the United States.

(4) An activity or investment occurs solely outside of the United States for purposes of paragraph (b)(1)(iv) of this section only if:

(i) The banking entity acting as sponsor, or engaging as principal in the acquisition or retention of an ownership interest in the covered fund, is not itself, and is not controlled directly or indirectly by, a banking entity that is located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to acquire or retain the ownership interest or act as sponsor to the covered fund is not located in the United States or organized under the laws of the United States or of any State;

(iii) The investment or sponsorship, including any transaction arising from risk-mitigating hedging related to an ownership interest, is not accounted for as principal directly or indirectly on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State; and

(iv) No financing for the banking entity's ownership or sponsorship is provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

(5) For purposes of this section, a U.S. branch, agency, or subsidiary of a foreign bank, or any subsidiary thereof, is located in the United States; however, a foreign bank of which that branch, agency, or subsidiary is a part is not considered to be located in the United States solely by virtue of operation of the U.S. branch, agency, or subsidiary.

(6) A "qualifying foreign excluded fund" meeting the requirements set forth in § __.13(b)(1)-(5) above shall be deemed a covered fund solely for purposes of § __.2(c)(2). *Qualifying foreign excluded fund* means an issuer that:

(i) Is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States;

(ii) Would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises money from

investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(iii) Would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;

(iv) Is established and operated as part of a bona fide asset management business; and

(v) Is not operated in a manner that enables the foreign banking entity to evade the requirements of 12 U.S.C. § 1851 or the regulations in [__] C.F.R. pt. [__].