These Davis Polk flowcharts are designed to assist banking entities in identifying permissible and impermissible covered fund activities, investments and relationships under the final regulations implementing the Volcker Rule, issued by the Federal Reserve, FDIC, OCC, SEC and CFTC on December 10, 2013.

The flowcharts graphically map the key elements of the covered fund provisions in the final regulations. An introduction to the new covered funds compliance requirements will also be available soon as a stand-alone module and in a single combined document.

Davis Polk’s proprietary trading flowcharts are available at www.volckerrule.com
# Volcker Rule — Covered Funds Overview

## What is a Banking Entity?
- Banking Entities with a U.S. Top Tier Parent
- Banking Entities with a Foreign Top Tier Parent

## What is a U.S. Organized or Located Banking Entity?
- Banking Entities with a U.S. Top Tier Parent
- Banking Entities with a Foreign Top Tier Parent

## What is a Covered Fund?
- Definition of a Covered Fund
- Exclusions from the Definition of Covered Fund

## What is an Ownership Interest?
- Definition of an Ownership Interest
- Exclusion for Restricted Profit Interest (Carried Interest)

## When is an Ownership Interest Not Held as Principal?

## What is a Sponsor of a Covered Fund?

## Exclusions from the Definition of Covered Fund
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- Foreign Public Fund
- Foreign Pension Fund
- Wholly Owned Subsidiary
- Joint Venture
- Acquisition Vehicle
- Loan Securitization
- ABCP Conduit
- Covered Bond Entities
- SBIC or Public Welfare Investment Fund
- Insurance Company Separate Account
- Bank Owned Life Insurance

### Permitted Activities
- Asset Management Exemption
- ABS Issuer Exemption
- Underwriting and Market Making
- Investment Limits
  - 3% Per Fund Limit
  - 3% of Tier 1 Capital Limit (and Capital Deduction)
- Attribution Rules
  - Generally
  - Multi-Tier Funds and Parallel Investments
- Seeding
- Risk-Mitigating Hedging of Employee Compensation
- Offshore Exemption
- Regulated Insurance Companies

## Do the Super 23A Restrictions Apply?
- Is an Otherwise Permitted Activity Precluded by a “Backstop” Prohibition?

## Conformance Period

## Davis Polk Contacts
**VOLCKER RULE — COVERED FUNDS OVERVIEW**

Is a **banking entity** engaged in any of the following activities:

- **GENERAL PROHIBITION**
  - Acquiring or retaining **as principal** an ownership interest in a covered fund?
  - Acting as **sponsor** of a covered fund?

- **EXCLUSIONS**
  - Does one of the **exclusions** from the definition of covered fund apply?

- **PERMITTED ACTIVITIES**
  - Is the activity a **permitted activity** under the Volcker Rule?

- **ACTIVITY IS NOT WITHIN THE SCOPE OF THE VOLCKER RULE**

- **ACTIVITY IS PROHIBITED UNDER THE VOLCKER RULE**

- **ACTIVITY IS PROHIBITED UNDER THE VOLCKER RULE**
  - Entering into a **covered transaction** with a related covered fund or a covered fund controlled by such related covered fund?

- **PRIME BROKERAGE EXCEPTION**
  - Is the covered transaction a prime brokerage transaction with a covered fund in which the related covered fund has made an investment?

- **IS THE ACTIVITY PRECLUDED BY A BACKSTOP PROHIBITION?**
  - Material conflict of interest between the banking entity and its clients, customers or counterparties?
  - Material exposure of the banking entity to **high-risk assets or trading strategies**?
  - Threat to the **safety and soundness** of the banking entity or to U.S. financial stability?

- **TIERED COMPLIANCE PROGRAM AND REPORTING REQUIREMENTS APPLY**

- **ACTIVITY IS PERMITTED UNDER THE VOLCKER RULE**
**What Is a Banking Entity?**

1. An insured depository institution?
   - YES
   - NO

2. A company that controls an insured depository institution (e.g., a bank holding company)?
   - YES
   - NO

3. A company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act?
   - YES
   - NO

4. An affiliate or subsidiary as defined in the Bank Holding Company Act of any of the above?
   - YES
   - NO

**Does the insured depository institution function solely in a trust or fiduciary capacity?**
- Substantially all of its deposits are in trust funds and are received in a *bona fide* fiduciary capacity
- None of its insured deposits are offered or marketed by or through an affiliate of the institution
- The institution does not
  - Accept demand deposits or deposits that can be withdrawn by check or similar means for payment to third parties or others or make commercial loans
  - Obtain payment or payment-related services from any Federal Reserve bank
  - Exercise Federal Reserve discount or borrowing privileges

**BANKING ENTITY**

**NOT A BANKING ENTITY**

**RICS, BDCs or Foreign Public Funds**

Although the term “banking entity” is defined in the final regulations to incorporate the terms “affiliate” and “subsidiary” from the BHC Act, and therefore the BHC Act’s definition of “control,” the agencies indicated in the preamble that whether a banking entity controls another entity under the BHC Act may vary depending on the type of entity in question.

The agencies indicated in the preamble that, absent other facts and circumstances establishing that a core banking entity or any of its affiliates has control over a RIC, BDC or foreign public fund, the RIC, BDC or foreign public fund will not be treated as a banking entity or an affiliate of a banking entity for purposes of the Volcker Rule if all of the following conditions are satisfied:

- No core banking entity or any of its affiliates:
  - Owns, controls or holds with the power to vote 25% or more of the voting shares, or appoints or has the power to appoint 25% or more of the directors, trustees or other managers, of the RIC, BDC or foreign public fund, or
  - Provides any investment advisory, commodity trading advisory, administrative or other services to the RIC, BDC or foreign public fund other than in compliance with any limitations under applicable regulation, order or other authority, and
  - The RIC, BDC or foreign public fund is not itself a core banking entity.

Such a RIC, BDC or foreign public fund would not be subject to the prohibitions in the Volcker Rule on proprietary trading or sponsoring or investing in, or entering into a covered transaction with, a covered fund.

**Core Banking Entity**
- A “core banking entity” means a banking entity as defined in boxes 1, 2 or 3.
**What Is a U.S. Organized or Located Banking Entity?**

**Banking Entities With a U.S. Top Tier Parent**
*(Incl. All Subsidiaries Worldwide)*

- **U.S. Top Tier Parent**
- **U.S. Bank**
- **Madrid Branch**
- **Japan Subsidiary**
- **Australia Indirect Subsidiary**

*See What Is a Covered Fund? and Foreign Public Fund, Slides 5 and 13*
What Is a U.S. Organized or Located Banking Entity?

**Banking Entities With a Foreign Top Tier Parent**
(Incl. All Subsidiaries Worldwide)

- **U.S. Organized or Located Banking Entities**
  - U.S. Bank
  - U.S. Subsidiary
  - U.S. Branch

- **E.U. Bank**
  - European Top Tier Parent
  - Mumbai Branch
  - Indonesia Subsidiary
  - Brazil Indirect Subsidiary

- **Foreign Organized or Located Banking Entities**

*See What Is a Covered Fund?, Foreign Public Fund and Offshore Exemption, Slides 5, 13 and 34*
A fund organized or established outside the United States that offers or sells interests inside the United States in reliance on section 3(c)(1) or 3(c)(7) of the 1940 Act

OR

With respect to a U.S. Organized or Located Banking Entity only that sponsors or owns an ownership interest in it, a fund that fulfills all of the following criteria:

- The fund is organized or established outside the United States.
- The ownership interests of the fund are offered and sold solely outside the United States.
- The fund is, or holds itself out as being, an issuer or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities.

See What is a U.S. Organized or Located Banking Entity?, Slides 3 and 4
Other than a restricted profit interest (carried interest), is the interest in the covered fund acquired or retained by the banking entity?

**Yes**

**Ownership Interest**

**No**

- **An other similar interest?**
  - **Yes**
    - **Ownership Interest**
  - **No**
    - **Not an Ownership Interest**

**Specified Characteristics of an “Other Similar Interest”**

An “other similar interest” includes any interest in or security issued by a covered fund that exhibits any of the following characteristics on a current, future or contingent basis:

- **Selection or removal of manager.** The right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser or commodity trading advisor of the covered fund (excluding the rights of a creditor upon an event of default or acceleration)

- **Share in income, gains or profits.** The right under the terms of the interest to receive a share of the income, gains or profits of the covered fund, whether or not pro rata with other owners or holders of interests

- **Residual interest in assets.** The right to receive the underlying assets of the covered fund after all other interests have been redeemed or paid in full (excluding the rights of a creditor upon an event of default or acceleration)

- **Excess spread.** The right to receive all or a portion of excess spread (i.e., the positive difference, if any, between the aggregate interest payments received from the underlying assets of the covered fund and the aggregate interest paid to the holders of other outstanding interests)

- **Write-down of amounts payable due to losses.** Provides that, under the terms of the interest, the amounts payable by the covered fund with respect to the interest could be reduced based on losses arising from the underlying assets of the covered fund, such as allocation of losses, write-downs or charge-offs of the outstanding principal balance, or reductions in the amount of interest due and payable on the interest

- **Return based on performance of assets.** Receives income on a pass-through basis or has a rate of return that is determined by reference to the performance of the underlying assets of the covered fund

- **Synthetic rights.** Synthetic right to have, receive or be allocated any of the rights above

**Debt Securities as Potential Ownership Interests**

- The agencies indicate in the preamble that an ownership interest does not generally cover typical extensions of credit the terms of which provide for payment of stated principal and interest calculated at a fixed rate or at a floating rate based on an index or interbank rate.

- However, a debt security or other interest in a covered fund that exhibits specified characteristics that are similar to those of equity or other ownership interests would be an ownership interest.

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EXCLUSION FOR RESTRICTED PROFIT INTEREST (Carried Interest)

GENERAL
Is the interest in the covered fund held by an entity, or an employee or former employee thereof, for which the entity or employee serves as any of the following:
- investment manager
- investment adviser
- commodity trading advisor
- other services provider — e.g., sub-adviser or placement agent?

YES ➔ PERFORMANCE COMPENSATION
Is the sole purpose and effect of the interest to allow the entity (or employee or former employee) to share in the profits of the covered fund as performance compensation for services provided to the covered fund, even if the entity (or employee or former employee) is obligated to return profits previously received?

YES ➔ DISTRIBUTED PROMPTLY OR HELD IN RESERVE SOLELY FOR CLAWBACK OBLIGATIONS
- Is all such profit, once allocated:
  o distributed promptly to the entity (or employee or former employee) after being earned or
  o if not so distributed, retained by the covered fund for the sole purpose of establishing a reserve amount to satisfy contractual obligations with respect to subsequent losses of the covered fund?
  • In addition, is the undistributed profit held in the covered fund held so as not to share in the subsequent investment gains of the covered fund?

YES ➔ RELATED AMOUNTS INVESTED ATTRIBUTED TO BANKING ENTITY FOR 3% DE MINIMIS LIMITS, CAPITAL DEDUCTION
Are any amounts invested in the covered fund, including any amounts paid by the entity (or employee or former employee) in connection with obtaining the carried interest included within the banking entity’s calculation of its 3% per fund limit, aggregate 3% of Tier 1 capital limit and capital deduction?

YES ➔ NON-TRANSFERABLE
Is the interest not transferable by the entity (or employee or former employee) except to:
- an affiliate thereof (or an employee of the banking entity or affiliate)
- immediate family members
- through intestacy, or
- in connection with a sale of the business that gave rise to the carried interest by the entity (or employee or former employee) to an unaffiliated party that provides services to the covered fund?

NO ➔ Ownership Interest

OWNERSHIP INTEREST

NOT AN OWNERSHIP INTEREST

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Is the ownership interest in the covered fund acquired or retained by the banking entity:

**Agent, Broker or Custodian**
- Acting solely as agent, broker or custodian for the account of, or on behalf of, a customer and the banking entity and its affiliates do not have or retain beneficial ownership of such ownership interest?

**Employee Benefit Plans**
- Through a:
  - deferred compensation
  - stock-bonus
  - profit-sharing or pension plan
  of the banking entity (or any of its affiliates) that is established and administered in accordance with US or foreign law, if the ownership interest is held or controlled directly or indirectly by the banking entity as trustee for the benefit of persons who are or were employees of the banking entity (or any of its affiliates)?

**DPC**
- In the ordinary course of collecting a debt previously contracted in good faith, provided that the banking entity divests the ownership interest as soon as practicable, and in no event later than the maximum period permitted by the relevant Volcker Rule agency?

**Trustee or Fiduciary**
- On behalf of a customer as trustee or in a similar fiduciary capacity for a customer that is not a covered fund, so long as the activity is conducted:
  - for the account of or on behalf of the customer
  - the banking entity and its affiliates do not have or retain beneficial ownership of such ownership interest?

**Other Non-Principal Capacity**
- In another non-principal capacity?

**Investment Prohibited Unless Covered Fund Is an Excluded Fund or Investment Is Permitted Activity**

**Not Prohibited by the Volcker Rule**
With respect to a **covered fund**, does the banking entity:

**General Partner**
- Serve as an **general partner** of the covered fund?  
  - **YES**  
  - **NO**

**Managing Member**
- Serve as an **managing member** of the covered fund?  
  - **YES**  
  - **NO**

**CPO**
- Serve as an **commodity pool operator** of the covered fund?  
  - **YES**  
  - **NO**

**Select or Control Majority of Directors, Trustees or Management**
- In any manner **select or control** (or have employees, officers, directors or agents who constitute) a majority of directors, trustees or management of the covered fund?  
  - **YES**  
  - **NO**

**Name-Sharing**
- Share with the covered fund, for corporate, marketing, promotional or other purposes, the **same name** or a **variation of the same name**?  
  - **YES**  
  - **NO**

**Trustee**
- Serve as a trustee of the covered fund, **other than**:
  - A trustee that does not **exercise investment discretion** with respect to a covered fund, including a **directed trustee** that is subject to the direction of an unaffiliated named fiduciary who is not a **directed trustee** under Section 403(a)(1) of ERISA
  - **YES**  
  - **NO**

- An entity will be a trustee within the meaning of the definition of sponsor if it **directs a person** serving as a trustee as described immediately above or **possesses authority and discretion** to manage and control the investment decisions of a covered fund for which such person serves as trustee
- **YES**  
- **NO**

- A trustee that is subject to **fiduciary standards imposed under foreign law** that are **substantially equivalent** to the ERISA standards described above
- **YES**  
- **NO**

**Initial Selection of Directors, Trustees or Management — Terminating Control**

The agencies indicate in the preamble that **initial selection of the board, trustees or management** is an action characteristic of a sponsor.

However, the agencies state that a banking entity that **does not continue to select or control a majority of the board of directors** would not be considered to be a sponsor on the basis of the initial selection of a majority of directors once the effect of such action or control terminates:

- In the case of a covered fund that will have a **self-perpetuating board of directors** or a **board selected by the fund’s shareholders**, such effect or control would be considered to have terminated when:
  - The board has held its first re-selection of directors or
  - First shareholder vote on directors occurs **without selection or control** by the banking entity

**Excluded Trustees, Custodians and Administrators**

The agencies indicate in the preamble that, in addition to US directed trustees and their foreign equivalents, the following trustees are excluded to the extent that they do **not exercise investment discretion** with respect to a covered fund:

- A trustee that is **required to ensure that underlying assets are appropriately segregated** for the benefit of the trust
- A trustee that is **authorized to replace an investment adviser when the investment adviser resigns**
- Generally, a trustee that **executes decision-making**, including investment of funds prior to the occurrence of an event of default, **solely according to the provisions of a written contract** or at the **written direction of an unaffiliated party**
- A trustee that **irrevocably delegates** all of its investment discretion to an **unaffiliated third party**

In addition, a **custodian** or **administrator** of a covered fund is not included within the definition of sponsor unless the definitional qualifications in the statute and final regulations are otherwise met.
**EXCLUSIONS FROM DEFINITION OF COVERED FUND**

**RIC or BDC**

<table>
<thead>
<tr>
<th>REGISTERED INVESTMENT COMPANY (RIC)</th>
<th>BUSINESS DEVELOPMENT COMPANY (BDC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the issuer:</td>
<td>Has the issuer elected to be regulated as a BDC and not withdrawn its election?</td>
</tr>
<tr>
<td>▪ Registered as an investment company under the 1940 Act?</td>
<td>▪ Is the issuer formed and operated pursuant to a written plan to become a BDC and complies with the requirements in Section 61 of the 1940 Act?</td>
</tr>
<tr>
<td>▪ Formed and operated pursuant to a written plan to become a RIC, and in compliance with the requirements of Section 18 of the 1940 Act?</td>
<td></td>
</tr>
</tbody>
</table>

**SEE SEEDING, SLIDE 31**

**EXCLUSIONS**

<table>
<thead>
<tr>
<th>COVERED FUND</th>
<th>IS THE ISSUER OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>

**NOT A COVERED FUND**
EXCLUSIONS FROM DEFINITION OF COVERED FUND

Excluded Private Fund (U.S. or Foreign)

- U.S. ISSUER
  - Can the issuer rely on an exclusion or exemption from the definition of investment company in the 1940 Act other than 3(c)(1) or 3(c)(7)?

- COVERED FUND
  - IS THE ISSUER OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?
    - NO
    - YES

- FOREIGN ISSUER
  - If the issuer were subject to US securities laws, would it be an investment company that could rely on an exclusion or exemption from the definition of investment company other than 3(c)(1) or 3(c)(7) of the 1940 Act?

- Examples of other 1940 Act Exemptions
  - Section 3(c)(5): Exempts certain types of REITs and other funds primarily engaged in the business of acquiring mortgages and other liens on and interests in real estate.
  - Section 3(c)(3): Exempts common trust funds maintained by a bank exclusively for the collective investment of funds contributed by the bank in its capacity as a trustee or administrator.
  - SEC Rule 3a-7: Exempts issuers of asset-backed securities the payments on which depend primarily on cash flows from a largely static pool of eligible assets that are not bought and sold for the primary purpose of recognizing gains or losses resulting from market changes.

- Not a Covered Fund
EXCLUSIONS FROM DEFINITION OF COVERED FUND

Foreign Public Fund

**Non-US Issuer**
Is the issuer organized or established outside of the United States?

**Retail Investors**
Is the issuer authorized to offer and sell ownership interests to retail investors in the issuer’s home jurisdiction?

**Public Offerings Predominantly Outside the United States**
Does the issuer sell ownership interests through public offerings predominantly outside the United States?

**US Organized or Located Banking Entity Sponsor**
Is the fund’s sponsor a US Organized or Located Banking Entity?

**Public Offering Requirements**
A public offering means a distribution of securities in any jurisdiction outside the United States to investors, including retail investors, that satisfies all of the following conditions:
- The distribution complies with all applicable requirements in the jurisdiction in which the distribution is made
- The distribution does not restrict availability to investors based on minimum net worth or net investment assets
- The issuer has filed or submitted offering disclosure documents with the appropriate regulatory authority in that jurisdiction that are publicly available

**Distribution of Securities**
An offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the presence of special selling efforts and selling methods
- An offering of securities made pursuant to an effective registration statement under the Securities Act of 1933

**Predominantly**
The agencies indicate in the preamble that an offering is made predominantly outside of the United States if 85 percent or more of the fund’s interests are sold to investors that are not US persons

**Additional Condition for US Organized or Located Banking Entity Sponsors Only**
Are the foreign public fund’s ownership interests sold predominantly to persons other than:
- The sponsoring US Organized or Located Banking Entity
- The foreign public fund itself
- Affiliates of the sponsoring US Organized or Located Banking Entity or the foreign public fund
- Directors and employees of such entities?

**Covered Fund**
Is the issuer otherwise excluded from the definition of covered fund?

**Exclusions**

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**Exclusions From the Definition of Covered Fund**

**Foreign Pension Fund**

Is the plan, fund or program providing pension, retirement or similar benefits:

- Organized and administered outside of the United States? **YES**
- A broad-based plan for employees or citizens that is subject to regulation as a pension, retirement, or similar plan under the laws of the jurisdiction in which it is organized and administered? **YES**
- Established for the benefit of citizens and residents of one or more foreign sovereigns or any political subdivision thereof? **YES**

If **NO** at any point, it is a Covered Fund.

If **YES** at all points, it is Not a Covered Fund.

Is the issuer otherwise excluded from the definition of covered fund? **YES**
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND
Wholly Owned Subsidiary

Are all of the ownership interests of the issuer owned directly or indirectly by the banking entity or its affiliate?

Yes: Are the other ownership interests of the issuer permitted minority interests?

Yes: PERMITTED MINORITY OWNERSHIP INTERESTS

- Up to 5% of the entity’s outstanding ownership interests (less permitted third-party interests) may be held by employees or directors of the banking entity or affiliate (or any former employee or director that acquired them while an employee or director)
- Up to 0.5% may be held by a third party if acquired or retained for the purpose of establishing corporate separateness or addressing bankruptcy, insolvency or similar concerns

No: NOT A COVERED FUND

IS THE ISSUER OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?

No: COVERED FUND

Yes: NOT A COVERED FUND
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

Joint Venture

**Unaffiliated Co-Venturers**
Is ownership of the issuer divided between a banking entity (and any of its affiliates) and one or more unaffiliated persons?

YES: Maximum of 10 Co-Venturers

NO: Not Held Out as a Private Equity Fund or Hedge Fund

**Maximum of 10 Co-Venturers**
Is the ownership of the issuer divided among no more than 10 unaffiliated co-venturers?

YES: Engaged in a Permitted Activity Other Than Merchant Banking or Insurance Co. Investment Activities

NO: NOT A COVERED FUND

**Engaged in a Permitted Activity Other Than Merchant Banking or Insurance Co. Investment Activities**
Is the issuer in the business of engaging in activities that are permissible for the banking entity or affiliate, other than investing in securities for resale or other disposition (i.e., merchant banking or insurance company investment activities)?

YES: YES

NO: NO

**Not Held Out as a Private Equity Fund or Hedge Fund**
Is the issuer, or does it hold itself out as being, an issuer or arrangement that raises money from investors primarily for the purposes of investing in securities for resale or other disposition or otherwise trading in securities (i.e., merchant banking or insurance company investment activities or hedge fund activities)?

YES: Yes

NO: NO

**Is the Issuer Otherwise Excluded from the Definition of Covered Fund?**

YES: Covered Fund

NO: NOT A COVERED FUND
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

Acquisition Vehicle

**LIMITED PURPOSE**
Is the issuer formed solely for the purpose of engaging in a *bona fide* merger or acquisition transaction?

YES

**LIMITED TIME**
Does the issuer exist only for such period as necessary to effectuate the transaction?

YES

NOT A COVERED FUND

NO

IS THE ISSUER OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?

YES

COVERED FUND

NO
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

Loan Securitization

Is the issuer an issuer of asset-backed securities, as defined in Section 3(a)(79) of the Securities Exchange Act of 1934?

YES

Are the assets and holdings of the issuer comprised solely of the following: loans, permitted derivatives, permitted securities, permitted servicing and contractual rights and SUBIs and collateral certificates?

YES

NOT A COVERED FUND

NO

IS THE ISSUER OTHERWISE EXCLUDED FROM DEFINITION OF COVERED FUND?

YES

COVERED FUND

NO

PERMITTED DERIVATIVES

Limited to interest rate derivatives or FX derivatives that:

- By their written terms, directly relate to the loans, the ABS or the Permitted Servicing and Permitted Contractual Rights or Permitted Securities
- Reduce the interest rate or FX risks related thereto

The agencies indicate in the preamble that the total notional amount of permitted interest rate derivatives or FX derivatives are expected not to exceed the greater of either the outstanding principal balance of the loans supporting the ABS or the principal balance of the ABS

- E.g., a $100 million securitization cannot be hedged using an interest rate derivative with a notional amount of $200 million

SUBIs and Collateral Certificates

Special units of beneficial interest and collateral certificates issued by an SPV, if all of the following are true:

- The SUBI / collateral certificate SPV issuer meets the requirements of the loan securitization exemption (e.g., holds only loan securitization-permissible assets)
- The SUBI or collateral certificate is used for the sole purpose of transferring the economic risks and benefits of permissible assets — no transfer of other economic or financial exposures
- The SUBI or collateral certificate is created solely to satisfy legal requirements or otherwise facilitate the structuring of the loan securitization
- The SUBI / collateral certificate SPV issuer is established under the direction of the same entity that initiated the loan securitization

NOT A COVERED FUND

EXCLUSIONS
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

**ABCP Conduit**

Does the conduit issue only **asset-backed securities**, comprised of a residual interest and ABS with a term of 397 days or less?

- **NO** → Does the conduit hold only **permissible assets**?
  - **NO** → Has a regulated liquidity provider entered into a legally binding commitment to provide full and unconditional liquidity coverage with respect to all of the outstanding ABS issued by the conduit (other than the residual interest) in the event that funds are required to redeem maturing ABS?
    - **YES** → **NOT A COVERED FUND**
    - **NO** → **COVERED FUND**

**PERMITTED ASSETS**

- **Assets permissible for a loan securitization**
  - Loans
  - Permitted servicing and contractual rights
  - Permitted securities
  - Permitted derivatives
  - SUBIs and collateral certificates
- **ABS supported solely by assets permissible for a loan securitization**
  - See above

**INITIAL ISSUANCE**

- Permitted ABS must have been acquired by the ABCP conduit as part of an **initial issuance** either directly from the **issuing entity** of the asset-backed securities or an **underwriter** in the distribution of such securities.
  - i.e. no secondary market purchases

**REGULATED LIQUIDITY PROVIDER**

- A regulated liquidity provider is any of the following:
  - Insured depository institution
  - Bank holding company or any of its subsidiaries
  - Savings and loan holding company provided that all or substantially all of its activities are permissible for a financial holding company under Section 4(k) of the BHC Act
  - Foreign bank whose home country supervisor has adopted capital standards consistent with Basel III and that is subject to such standards, or any of its subsidiaries
  - The United States or a foreign sovereign

**100% LIQUIDITY COVERAGE**

- **100% liquidity coverage** means that:
  - in the event the conduit is unable for any reason to repay maturing asset-backed securities issued by the conduit, the **total amount** for which the regulated liquidity provider may be obligated is equal to 100 percent of the amount of asset-backed securities outstanding plus accrued and unpaid interest

**PERMISSIBLE FORMS OF LIQUIDITY COVERAGE**

- Lending facility
- Asset purchase agreement
- Repurchase agreement or
- Similar arrangement
COVERED BONDS

A covered bond means either:
- A debt obligation issued by a foreign banking organization provided that its payment obligations are fully and unconditionally guaranteed by an eligible covered bond entity
- A debt obligation of an eligible covered bond entity that is a wholly-owned subsidiary of a foreign banking organization provided that the issuer’s payment obligations are fully and unconditionally guaranteed by the foreign banking organization parent

Permitted Assets
- Loans
- Permitted servicing and contractual rights
- Permitted securities
- Permitted derivatives
- SUBIs and collateral certificates

See Loan Securitization, Slide 18

Exclusions from the Definition of Covered Fund

Covered Bond Entities

Does the entity own or hold a dynamic or fixed pool of loans and other permitted assets?

Yes

Does the entity hold such assets for the benefit of the holders of covered bonds?

No

Covered Fund

Is the entity otherwise excluded from the definition of covered fund?

No

Permitted Assets

Covered Bonds

Exclusions
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

SBIC or Public Welfare Investment Fund

**SMALL BUSINESS INVESTMENT COMPANY (SBIC)**

An issuer:
- That is an SBIC as defined in the Small Business Investment Act or
- That has received a notice to proceed or license from the Small Business Administration; and whose notice or license has not been revoked?

**PUBLIC WELFARE INVESTMENT FUNDS**

An issuer, the business of which is to make investments that are:
- Designed primarily to promote the public welfare of the type permitted under 12 USC 24, including the welfare of low- and moderate-income communities or families (such as providing housing, services or jobs and Community Reinvestment Act (CRA) qualified investments)?

**QUALIFIED REHABILITATION EXPENDITURES**

An issuer, the business of which is to make investments that are:
- Qualified rehabilitation expenditures with respect to a qualified rehabilitation building or certified historic structure, as defined in section 47 of the Internal Revenue Code, or a similar state historic tax credit program?

**IS THE ISSUER OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?**

- NO
- YES

**COVERED FUND**

**NOT A COVERED FUND**
EXCLUSIONS FROM THE DEFINITION OF COVERED FUND

Insurance Company Separate Account

For a separate account established by a banking entity that is an insurance company:

Does a banking entity other than the insurance company that established the separate account participate in the account’s profits and losses?

- **NO** → NOT A COVERED FUND
- **YES** → IS THE ENTITY OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?
  - **NO** → NOT A COVERED FUND
  - **YES** → COVERED FUND

**SEPARATE ACCOUNT**

An account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company’s other assets, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.
Is the separate account used **solely** for the purpose of allowing one or more banking entities to purchase a life insurance policy for which the banking entities are beneficiaries? 

**YES**

Does a *banking entity* that purchases the policy control the investment decisions regarding the underlying assets or holdings of the separate account? 

**NO**

Does a banking entity that purchases the policy participate in the profits and losses of the separate account other than in compliance with applicable supervisory guidance regarding bank owned life insurance? 

**NO**

**NOT A COVERED FUND**

**YES**

**PURCHASES FROM AFFILIATED INSURANCE COMPANY**

The Agencies indicate in the preamble that this requirement does not preclude a banking entity from purchasing a life insurance policy from an affiliated insurance company.

**YES**

**IS THE SEPARATE ACCOUNT OTHERWISE EXCLUDED FROM THE DEFINITION OF COVERED FUND?**

**NO**

**COVERED FUND**
### PERMITTED ACTIVITIES

#### Asset Management Exemption

A banking entity may acquire or retain an ownership interest in, or act as a sponsor to, a covered fund, in connection with directly or indirectly organizing and offering the covered fund if:

1. **Provides Bona Fide Services**
   - The banking entity or an affiliate provides bona fide trust, fiduciary, investment advisory or commodity trading advisory services.

2. **Customers of Bona Fide Services**
   - The covered fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, investment advisory or commodity trading advisory services and only to persons that are customers of such services of the banking entity or an affiliate.

3. **Compliance with Investment Limits**
   - The banking entity and its affiliates do not acquire or retain an ownership interest in the covered fund other than a de minimis investment in compliance with investment limits.

4. **Super 23A**
   - The banking entity and its affiliates comply with the Volcker Rule’s Super 23A restrictions and 23B restrictions.

5. **No Guarantees**
   - The banking entity and its affiliates do not, directly or indirectly, guarantee, assume or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests.

6. **No Name Sharing**
   - The covered fund, for corporate, marketing, promotional or other purposes, does not share the same name or a variation of the same name with the banking entity or its affiliates, and does not use the word “bank” in its name.

7. **Restrictions on Investments by Directors and Employees**
   - Only directors or employees of the banking entity or an affiliate directly engaged in providing investment advisory, commodity trading advisory or other services to the covered fund at the time the director or employee takes the ownership interest may invest in the covered fund.

8. **Written Disclosures**
   - The banking entity clearly and conspicuously makes certain written disclosures to any prospective and actual investor in the covered fund.

#### Customers

- Includes existing and new customers, but the banking entity must have a “written plan or similar documentation” outlining how the banking entity intends to provide advisory or similar services to its customers through organizing and offering the covered fund.

#### Other Services

The preamble indicates that director and employees who provide any of the following examples of “other services” to a covered fund that enable the provision of investment advice or investment management — including any former director or employee who provided such services to the covered fund at the time of investment — may invest in or retain an investment in the covered fund:

- Oversight
- Risk Management
- Deal Origination
- Due Diligence
- Administrative
- Other Services

#### Required Disclosures

- **SUPER 23A, 23B**
  - See Do the “Super 23A” Restrictions Apply?, Slide 36

- **INVESTMENT LIMITS AND CAPITAL DEDUCTION**
  - See Investment Limits, Slides 27-31
  - See Seeding, Slide 32

- Any losses in the covered fund will be borne solely by investors in the covered fund and not by the banking entity or its affiliates; therefore the banking entity’s losses in the covered fund will be limited to losses attributable to the ownership interests in the covered fund held by the banking entity and any affiliate in its capacity as investor in the covered fund or as beneficiary of a carried interest held by the banking entity or any affiliate.

- The prospective or actual investor should read the fund offering documents before investing in the covered fund.

- Ownership interests in the covered fund are not insured by the FDIC, and are not deposits, obligations of, or endorsed or guaranteed in any way, by any banking entity (unless that happens to be the case).

- The role of the banking entity and its affiliates and employees in sponsoring or providing any services to the covered fund.
PERMITTED ACTIVITIES
ABS Issuer Exemption

A banking entity may acquire or retain an ownership interest in, or act as a sponsor to, a covered fund that is an issuing entity of asset-backed securities in connection with directly or indirectly organizing and offering* that issuing entity, if:

1. Compliance with Investment Limits
   - The banking entity and its affiliates do not acquire or retain an ownership interest in the covered fund other than in compliance with investment limits.

2. Super 23A
   - The banking entity and its affiliates comply with the Volcker Rule’s Super 23A restrictions and 23B restrictions.

3. No Guarantees
   - The banking entity and its affiliates do not guarantee, assume or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests.

4. No Name Sharing
   - The covered fund, for corporate, marketing, promotional or other purposes, does not share the same name or a variation of the same name with the banking entity or its affiliates and does not use the word “bank” in its name.

5. Restrictions on Investments by Directors and Employees
   - Only directors or employees of the banking entity or an affiliate directly engaged in providing investment advisory, commodity trading advisory or other services to the covered fund at the time the director or employee takes the ownership interest may invest in the covered fund.

6. Written Disclosures
   - The banking entity clearly and conspicuously makes certain written disclosures to any prospective and actual investor in the covered fund.

* Organizing and offering a covered fund that is an issuing entity of asset-backed securities means:
  - Acting as the securitizer for the issuer, as defined in the Securities Exchange Act; or
  - Acquiring or retaining an ownership interest in the issuing entity as required by the credit risk retention requirements of Section 15G of the Securities Exchange Act and its implementing regulations.

SEURITIZER
The term securitizer is defined in the Securities Exchange Act to mean:
- An issuer of an asset-backed security; or
- A person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.

RISK RETENTION
- Section 15G of the Exchange Act requires certain parties to a securitization transaction to retain and maintain a minimum of 5% of the risk of the securitization, which is permitted under the 3% per fund investment limits.
- The final rule does not provide an exemption to permit banking entities to comply with any risk retention requirement imposed under foreign law.

See 3% Per Fund Limit, Slide 28

SUPER 23A, 23B
See Do the “Super 23A” Restrictions Apply?, Slide 36

REQUIRED DISCLOSURES
See Asset Management Exemption, Slide 24

OTHER SERVICES
See Asset Management Exemption, Slide 24

INVESTMENT LIMITS AND CAPITAL DEDUCTION
See Investment Limits, Slides 27-31
See Seeding, Slide 32
PERMITTED ACTIVITIES
Underwriting and Market Making

A banking entity may acquire or retain ownership interests in a covered fund as underwriter or market-maker if:

The underwriting or market making-related activities are conducted in accordance with the requirements for permitted underwriting or market making-related activities in the proprietary trading provisions of the final regulations.

CONDUCTED IN ACCORDANCE WITH REQUIREMENTS APPLICABLE TO THE RELEVANT PROP TRADING PERMITTED ACTIVITY

The underwriting or market making-related activities are conducted in accordance with the requirements for permitted underwriting or market making-related activities in the proprietary trading provisions of the final regulations.

SUMMARY OF KEY APPLICABLE REQUIREMENTS – UNDERWRITING (§__.4(a))

- Banking entity is acting as an underwriter for a distribution of ownership interests in a covered fund and the trading desk’s underwriting position is related to such distribution.
- Amount and type of ownership interests in the trading desk’s underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers or counterparties.
- Reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period.
- Internal compliance program established and enforced (may include metrics requirements).
- Compensation arrangements designed not to reward or incentivize prohibited prop trading.
- Banking entity is licensed or registered to engage in underwriting, if required.

SUMMARY OF KEY REQUIREMENTS – MARKET MAKING (§__.4(b))

- Trading desk that acquires ownership interests in a covered fund routinely stands ready to purchase and sell such ownership interests.
- Such trading desk is willing and available to quote, purchase and sell such ownership interests for its own account in commercially reasonable amounts throughout market cycles.
- Amount, types and risks of ownership interests in the trading desk’s market-maker inventory are designed not to exceed the reasonably expected near term demand of clients, customers or counterparties.
- Internal compliance program established and enforced (may include metrics requirements).
- Prompt return to compliance when any limits exceeded.
- Compensation arrangements designed not to reward or incentivize prohibited prop trading.
- Banking entity is licensed or registered to engage in market making-related activities, if required.

THIRD PARTY COVERED FUNDS

The underwriting and market-making exemption applies to ownership interests in any covered fund, including covered funds organized, offered, sponsored, advised or controlled by an unaffiliated third party.

3% PER FUND LIMITS

Ownership interests acquired or retained by a banking entity pursuant to the underwriting and market-making exemption are subject to the 3% per fund limits if they are or were issued by a covered fund:

- Asset management or ABS issuer exemptions. As to which the banking entity is a sponsor or in which the banking entity acquires and retains an ownership interest pursuant to the asset management or ABS issuer exemptions, or
- Other related covered funds:
  - As to which the banking entity is otherwise a sponsor, investment adviser or commodity trading advisor, or
  - As to which the banking entity directly or indirectly guarantees, assumes or otherwise insures the obligations or performance of such fund or any covered fund in which such fund invests.

The agencies indicated in the preamble that a banking entity would not be treated as guaranteeing the obligations or performance of a covered fund if it enters into arrangements, such as providing liquidity facilities or letters of credit, that are not entered into for the purpose of guaranteeing the obligations or performance of the covered fund.

The 3% per fund limit does not apply to ownership interests acquired or retained pursuant to the underwriting and market making exemption in any covered fund organized and offered by the banking entity pursuant to the asset management or ABS exemptions during the seeding period for such fund.

The 3% per fund limit is calculated as of the end of each quarter, but the agencies indicated in the preamble that if a banking entity becomes aware that it has exceeded the 3% limit for a given fund at any time, the agencies expect the banking entity to take steps to ensure that it complies promptly with the 3% per fund limit.

AGGREGATE 3% OF TIER 1 CAPITAL LIMIT AND CAPITAL DEDUCTIONS

- Ownership interests in any covered fund, including a third-party fund, which are acquired and retained by a banking entity pursuant to the underwriting and market making exemption are subject to the aggregate 3% of Tier 1 capital limits and capital deductions.
- The aggregate 3% of Tier 1 capital limit is calculated as of the end of each quarter, but the agencies indicated in the preamble that if a banking entity becomes aware that it has exceeded the 3% limit for a given fund at any time, the agencies expect the banking entity to take steps to ensure that it complies promptly with the 3% per fund limit.

SEE DAVIS POLK PROPRIETARY TRADING FLOWCHARTS, SLIDES 6-8 FOR DETAILS ON THESE PERMITTED ACTIVITIES

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SEE INVESTMENT LIMITS, AND SEEDING SLIDES 27–32
PERMITTED ACTIVITIES

3% Per Fund Limit:
Asset Management Exemption

Except as permitted during the seeding period and for multi-tier fund investments, the following rules apply for calculating a banking entity’s ownership interests in a single covered fund that the banking entity organizes and offers or sponsors under the asset management exemption, including ownership interests acquired or retained under the underwriting and market making exemption.

3% PER FUND BY NUMBER AND VALUE

3% of Total Number or Value. The maximum permissible investment or other holding by a banking entity and its affiliates in a single covered fund under the asset management exemption, when aggregated with any ownership interests acquired or retained under the underwriting and market making exemption, is 3% of the total number or value of the outstanding ownership interests of the covered fund (all measured without regard to funds committed but not yet called for investment):

- Total number: The total number of outstanding ownership interests held by the banking entity under the asset management or underwriting and market making exemptions divided by the total ownership interests held by all investors or other holders in that fund.
- Total fair market value: The aggregate fair market value of all investments or other holdings in and capital contributions made to the covered fund by the banking entity under the asset management or underwriting and market making exemptions divided by the value of all investments or other holdings in and capital contributions made to the covered fund by all investors.
- If fair market value cannot be determined, then the value will be the historical cost basis of the investments or other holdings and capital contributions.

CONSISTENCY OF CALCULATION

- Consistent with financial statements and regulatory reports. The agencies indicated in the preamble that a banking entity should use the same methodology for valuing its investments and capital contributions as the banking entity uses to prepare its financial statements and regulatory reports.
- Same manner and standards. Once a valuation methodology is chosen, the banking entity must calculate the value of its investment or other holding and the investments or other holdings of all others in the covered fund in the same manner and according to the same standards.

TIMING

Quarterly. The 3% per fund limit is calculated as of the last day of each calendar quarter.

- 3% limit applies at all times. The agencies indicate in the preamble that the 3% per fund limitations apply to investments or other holdings in covered funds under the asset management or underwriting and market making exemptions at all times following the end of the seeding period.
- Prompt compliance expected if 3% per fund limit exceeded. They also indicate in the preamble that if a banking entity becomes aware that it has exceeded the 3% limit for a given fund at any time, the agencies expect the banking entity to take steps to ensure that it complies promptly with the 3% per fund limit.

ATTRIBUTION *

See Attribution Rules, Slides 30-31

OTHER 3% PER FUND LIMITS

See 3% Per Fund Limit: ABS Issuer Exemption, Slide 28
See Underwriting and Market Making Exemption (3% Per Fund Limits — Other Related Covered Funds), Slide 26

SEEDING PERIOD

See Seeding, Slide 32

Aggregate 3% of Tier 1 Capital Limit**

See Aggregate 3% of Tier 1 Capital Limit, Slide 29

* Includes Multi-Tier Investments
** Includes Deductions from Capital
PERMITTED ACTIVITIES
3% Per Fund Limit:
ABS Issuer Exemption

Except as permitted during the seeding period and for multi-tier fund investments, the following rules apply for calculating a banking entity’s ownership interests in a single covered fund that the banking entity organizes and offers or sponsors under the ABS issuer exemption, including ownership interests acquired or retained under the underwriting and market making exemption.

3% De Minimis or 5% Risk Retention

The maximum permissible investment or other holding by a banking entity and its affiliates in a single covered fund organized and offered under the ABS issuer exemption, when aggregated with any ownership interests acquired or retained under the underwriting and market making exemption, is:

- **3% De Minimis**
- **5% Risk Retention**

The banking entity and its affiliates are required to retain a greater percentage in compliance with the credit risk retention requirements of Section 15G of the Securities Exchange Act and its implementing regulations, in which case the investment by the banking entity and its affiliates in the covered fund may not exceed the amount, number, or value of ownership interests of the fund required thereunder.

- **Risk retention requirements.** Section 15G requires certain parties to a securitization transaction to retain and maintain a minimum of 5% of the risk of the securitization.
- **No accommodation for foreign risk retention requirements.** The agencies note in the preamble that the final rule does not provide an exemption to permit banking entities to comply with any risk retention requirement imposed under foreign law.

Fair market value of assets. The aggregate value of the outstanding ownership interests in the covered fund will be the **fair market value of the assets transferred to the issuing entity** of the securitization and any other assets otherwise held by the issuing entity at such time, determined in a manner that is consistent with its determination of the fair market value of those assets for financial statement purposes.

Not calculated by class or tranche. The agencies note in the preamble that the 3% per fund limit for ownership interests in ABS issuers is calculated based only on the value of the ownership interest in relation to the value of all ownership interests in the issuing entity of the asset-backed security and are not calculated on a class by class, or tranche by tranche, basis.

Date of establishment. As of the date on which the assets were initially transferred into the ABS issuing entity or such earlier date on which the transferred assets have been valued for purposes of transfer to the covered fund.

Valuation consistency. The valuation methodology used to calculate the fair market value of the ownership interests held by the banking entity and its affiliates must be the same for both the ownership interests held by the banking entity and the ownership interests held by all others in the covered fund in the same manner and according to the same standards.


timing of 3% per fund limit calculation:

- **Not Subject to Risk Retention Requirements**
  - or Completed Prior to Risk Retention Compliance Date
  - As of the date on which the assets were initially transferred into the ABS issuing entity or Such earlier date on which the transferred assets have been valued for purposes of transfer to the covered fund

- **Subject to Risk Retention Requirements**
  - and After Risk Retention Compliance Date
  - As of the date and pursuant to the methodology applicable pursuant to the risk retention requirements of section 15G of the Exchange Act and its implementing regulations

Other 3% Per Fund Limits

- See 3% Per Fund Limit: Asset Management Exemption, Slide 27
- See Underwriting and Market Making Exemption (3% Per Fund Limits — Other Related Covered Funds), Slide 26

Attribution*

- See Attribution Rules, Slides 30-31

Seedling Period

- See Seeding, Slide 32

Aggregate 3% of Tier 1 Capital Limit**

- See Aggregate 3% of Tier 1 Capital Limit, Slide 29

Additional Information

- Includes Multi-Tier Investments
- Includes Deductions from Capital
- Recalculation of the banking entity’s 3% per fund limit is not required unless the covered fund sells additional securities

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PERMITTED ACTIVITIES

 Aggregate 3% of Tier 1 Capital Limit/Capital Deductions

The aggregate value of all ownership interests in covered funds acquired and retained by a banking entity under the asset management, ABS issuer and underwriting and market making exemptions will be the sum of all amounts paid or contributed by the banking entity in connection with acquiring or retaining an ownership interest in covered funds (together with any amounts of investments made by the entity, or any of its employees, in connection with obtaining a restricted profit or carried interest).

**GRAPHICS ON THIS PAGE**

**BLUE DOTTED LINES:** Entities at which aggregate 3% of Tier 1 capital limit must be calculated and complied with on a consolidated basis and investments and other holdings must be deducted from consolidated Tier 1 capital.

**RED DOTTED LINES:** Entities at which aggregate 3% of Tier 1 capital limit must be calculated in accordance with home country standards and complied with on a consolidated basis; no capital deduction required.

**GREEN DOTTED LINES:** Entities at which the aggregate limit is based on 3% of shareholders’ equity, as determined under applicable accounting standards, not Tier 1 capital; no capital deduction required.

**CALCULATION OF THE AGGREGATE 3% OF TIER 1 CAPITAL LIMIT**

- **Valuation Method.** The investments or holdings are valued at historical cost.
- **Monitoring.** The agencies note in the preamble that banking entities are expected to monitor investments in covered funds regularly and remain in compliance with the limitations on covered fund investments throughout the quarter and that the agencies intend, through their respective supervisory processes, to monitor covered fund investment activity to ensure that a banking entity is not attempting to evade the requirements of the Volcker Rule.

**CAPITAL DEDUCTIONS**

The aggregate value of all ownership interests of a banking entity and its affiliates in all covered funds acquired or retained under the asset management, ABS issuer or underwriting and market making exemptions must be deducted from a banking entity’s Tier 1 capital.

- **Valuation Method.** The investments or holdings are valued at the greater of historical cost (plus earnings) and fair market value.
- **Interaction with Basel III.** The agencies indicate in the preamble that the U.S. banking regulators intend to review the interaction between the Volcker Rule capital deduction and U.S. Basel III and expect to propose steps to reconcile the two rules.

- **Timing.** The aggregate funds limitation and capital deduction must be calculated at the end of each calendar quarter or at such other time as the appropriate Federal banking agency may request such a calculation.
PERMITTED ACTIVITIES
Attribution Rules — Generally

**GENERAL APPROACH TO ATTRIBUTION**
- The agencies described their general approach to the attribution of ownership interests for purposes of the investment limits as follows:

  "Under the final rule, a banking entity must account for an investment in a covered fund for purposes of the per-fund and aggregate funds limitations only if the investment is made by the banking entity or another entity controlled by that banking entity. Accordingly, the final rule does not generally require that a banking entity include the pro rata share of any ownership interest held by any entity that is not controlled by the banking entity, and thus reduces the potential compliance costs of the final rule. The Agencies believe that this concept of attribution is more consistent with how the [Federal Reserve] has historically applied the concept of 'control' under the BHC Act for purposes of determining whether a company subject to that Act is engaged in an activity or whether to attribute an investment to that company."

  Preamble, pg. 704.

**NORMAL COVERED FUNDS**
A normal covered fund is a covered fund that is not itself a "core banking entity".

  A normal covered fund is excluded from the term banking entity for the purposes of the Volcker Rule. Consequently:

  - A normal covered fund is not itself subject to the prohibitions or restrictions of the Volcker Rule, including the limits on acquiring or retaining ownership interests in another covered fund
  - Subject to the special attribution rules for master-feeder funds, funds-of-funds, and parallel funds, ownership interests acquired or retained by a normal covered fund in another covered fund are not attributable to a banking entity that sponsors, advises or controls the normal covered fund

**CORE BANKING ENTITY**
- A core banking entity. An insured depository institution, bank holding company or other company that controls an insured depository institution, or a foreign bank with a U.S. commercial banking presence or a company that controls such a foreign bank.

- A "U.S. commercial banking presence" means having a U.S. branch, U.S. agency, U.S. commercial lending company or Edge Act subsidiary

**RICs, BDCs and FOREIGN PUBLIC FUNDS**
For purposes of the investment limits, a registered investment company, business development company or foreign public fund is not treated as an affiliate of a banking entity, as long as the other banking entity satisfies both of the following conditions:

  - Does not own, control or hold with the power to vote 25% or more the voting shares of the company or fund; and
  - Any investment advisory, commodity trading advisory, administrative and other services provided by the banking entity or an affiliate to the RIC, BDC or foreign public fund is provided in compliance with any limitations under applicable regulation, order or other authority.

Consequently, subject to the special attribution rules for master-feeder funds, funds-of-funds, and parallel funds, ownership interests acquired or retained in a covered fund by a RIC, BDC or foreign public fund are not attributable to a banking entity for purposes of the investment limits, if the banking entity satisfies both of the conditions set forth above with respect to the RIC, BDC or foreign public fund.

**EMPLEYES AND DIRECTORS**
For purposes of the investment limits, ownership interests acquired or retained by a director or employee of a banking entity in a covered fund sponsored by the banking entity, other than ownership interests acquired and retained in connection with obtaining a restricted profit interest (carried interest), will not be attributed to the banking entity as long as both of the following conditions are satisfied:

  - The director or employee acquires such ownership interests in his or her personal capacity
  - The banking entity does not, directly or indirectly, extend financing for the purpose of enabling the director or employee to acquire the ownership interest in the fund or the financing is not used to acquire the ownership interests

In the preamble, the agencies:

- Clarified that a guarantee by the banking entity of the director or employee's obligations on financing obtained from a third party constitutes indirect financing by the banking entity
- Explained that so long as the investments are truly made with personal resources, and are not funded by the banking entity, they would not expose the banking entity to loss
- Stated that ownership interests acquired and retained by a director or employee of a banking entity in a covered fund sponsored by the banking entity in connection with obtaining a restricted profit interest (carried interest) will be attributed to the banking entity, regardless of whether the banking entity finances the acquisition or retention of such ownership interests
- Stated that they intend to monitor investments by directors and employees of banking entities to ensure that investments by directors or employees are not used by banking entities to circumvent the investment limits, and that they will consider the following factors in evaluating whether any evasion is taking place:
  - Whether the benefits of the acquisition and retention, such as dividends, inure to the benefit of the director or employee and not the banking entity
  - Whether the voting or control of the ownership interests is subject to the direction of, or otherwise controlled by, the banking entity
  - Whether the director or employee, rather than the banking entity, determines whether the director or employee should make the investment.

**SEE WHAT IS A BANKING ENTITY? (RICs, BDCs OR FOREIGN PUBLIC FUNDS), SLIDE 2**

**SEE ATTRIBUTION RULES — MULTI-TIER FUNDS AND PARALLEL INVESTMENTS, SLIDE 31**
PARALLEL INVESTMENTS

The agencies explained in the preamble that they had decided not to adopt a proposed rule that would have required banking entities to aggregate a wide range of parallel investments made with covered funds to prevent evasion of the investment limits because many investments made by banking entities in the same companies as related covered funds "are made for the purpose of serving the legitimate needs of customers and shareholders, and not for the purpose of circumventing the per-fund and aggregate fund limitations in [the Volcker Rule]."

Coordinated Investments. They nevertheless warned that "the potential for evasion of these limitations may be present where a banking entity coordinates its direct investment decisions with the investments of covered funds that it owns or sponsors." They gave three examples when coordinated investments should be aggregated for purposes of the investment limits:

- Co-Investments with Sponsored Covered Funds. "If a banking entity makes co-investments with a sponsored covered fund . . . it is relatively common for the sponsor of a covered fund . . . to offer investors co-investment opportunities when the general partner or investment manager for the covered fund determines that the covered fund does not have sufficient capital available to make the entire investment in the target portfolio company or determines that it would not be suitable for the covered fund to take the entire available investment. In such circumstances, a banking entity that sponsors the covered fund should not itself make any additional side by side co-investment with the covered fund . . . unless the value of such co-investments is less than 3% of the value of the total amount co-invested by other investors in such investment."

- Co-Investment Vehicles. "If the co-investment is made through a co-investment vehicle that is itself a covered fund (a "co-investment fund"), the sum of the banking entity's ownership interests in the co-investment fund and the related covered fund should not exceed 3% of the sum of the ownership interests held by all investors in the co-investment fund and related covered fund."

- Pattern of Parallel Investing. "If a banking entity makes investments side by side in substantially the same positions as the covered fund, then the value of such investments shall be included for purposes of determining the value of the banking entity's investment in the covered fund."

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PERMITTED ACTIVITIES

Seeding

Subject to certain conditions, a banking entity is permitted to establish and seed a covered fund with sufficient initial equity to permit the covered fund to attract unaffiliated investors, notwithstanding the general prohibition on investing in ownership interests in covered funds or the 3% per fund investment limits.

DATE OF ESTABLISHMENT

END OF 1-YEAR GENERAL SEEDING PERIOD

MAXIMUM 3-YEAR SEEDING PERIOD

GENERAL SEEDING PERIOD (1 YEAR)

POTENTIAL EXTENSION FOR UP TO 2 ADDITIONAL YEARS (UP TO 2 YEARS TOTAL)

SEEDING PERIOD FOR COVERED FUNDS

A banking entity may provide a covered fund that it organizes and offers pursuant to the asset management or ABS issuer exemptions with seed equity if it:

- Actively seeks to reduce ownership by actively seeking unaffiliated investors to conform its investment to the 3% per fund limits.
- Conforms its investment to the 3% per fund limits within 1 year after the date of establishment of the covered fund, or such longer period as the Federal Reserve may allow.

DATE OF ESTABLISHMENT

- In general, the date on which the investment adviser or similar entity to the covered fund begins making investments pursuant to the written strategy for the fund.
- For a fund organized and offered under the ABS issuer exemption, the date on which the assets were initially transferred into the ABS issuing entity.

APPLICABLE LIMITS DURING THE SEEDING PERIOD

- A banking entity must comply with the aggregate 3% of Tier 1 capital limit during the seeding period.
- No strict dollar limit on the amount of funds a banking entity may use to seed, organize and offer a covered fund.

SEE INVESTMENT LIMITS, SLIDES 27–31

EXTENSION OF SEEDING PERIOD

- Upon application by a banking entity, the Federal Reserve may extend the seeding period for up to two additional years if it finds that an extension of time would be consistent with the safety and soundness of the banking entity and not detrimental to the public interest.

An application must:

- Be submitted at least 90 days prior to the expiration of the seeding period.
- Provide the reasons for the application.
- Explain the banking entity’s plan for reducing the permitted investment in the covered fund as required by the seeding period investment limits.

FACTORS IN THE REVIEW OF THE EXTENSION OF SEEDING PERIOD

In deciding whether to grant an extension, the Federal Reserve may consider all the facts and circumstances, including all of the following:

- High-risk assets or trading strategies.
- Contractual terms.
- Projected compliance timing.
- Risks to the banking entity or financial stability.
- Cost to the banking entity of divesting or disposing of the investment within the applicable period.
- Conflict of interest.
- Prior efforts to reduce its ownership interests in the covered fund.
- Market conditions.

SEEDING REQUIREMENTS FOR RICs AND BDCs

A seeding vehicle that is formed and operated pursuant to a written plan to become a RIC or a BDC, developed in accordance with the banking entity’s compliance program, that reflects the banking entity’s determination that the vehicle will become a RIC or BDC within the time period provided by the final rule for seeding a covered fund and complies with the limitations on leverage under the 1940 Act that apply to RICs and BDCs, is excluded from the definition of covered fund.

A banking entity with more than $10 billion in consolidated assets must maintain records with respect to such issuers that include all of the following:

- A written plan documenting the banking entity’s determination that the seeding vehicle will become a RIC or BDC.
- The period of time during which the vehicle will operate as a seeding vehicle.
- The banking entity’s plan to market the vehicle to third-party investors and convert it into a RIC or BDC.

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PERMITTED ACTIVITIES

Risk-Mitigating Hedging of Employee Compensation

A banking entity is permitted to acquire or retain ownership interests in covered funds organized and offered or sponsored by the banking entity pursuant to the asset management or ABS issuer exemptions to hedge risks in connection with an employee compensation arrangement provided that:

1. The hedge is designed to demonstrably reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with a compensation agreement with an employee or former employee of the banking entity or an affiliate thereof that directly provides or provided investment advisory, commodity trading advisory or other services to the covered fund.

2. At the inception of the hedge, the hedge is designed to reduce or otherwise significantly mitigate and demonstrably reduces or otherwise significantly mitigates one or more specific, identifiable risks arising in connection with the compensation arrangement with the employee or former employee that directly provides or provided investment advisory, commodity trading advisory or other services to the covered fund.

3. The hedge does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously.

4. The compensation arrangement relates solely to the covered fund in which the banking entity has acquired an ownership interest pursuant to the risk-mitigating hedging permitted activity and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

5. The banking entity has established and implements, maintains and enforces an internal compliance program that is reasonably designed to ensure compliance with the requirements of the risk-mitigating hedging permitted activity, including:
   - Reasonably designed written policies and procedures
   - Internal controls and ongoing monitoring, management and authorization procedures, including relevant escalation procedures.

6. The hedge is acquired or retained in accordance with the written policies, procedures and internal controls required pursuant to the risk-mitigating hedging permitted activity.

7. The hedge is subject to continuing review, monitoring and management by the banking entity.

EXPOSURES TO PRICE AND OTHER FUND PERFORMANCE RISKS

The agencies indicate in the preamble that a banking entity may hedge its exposures to price and other risks based on fund performance that arise from restricted profit interest (carried interest) and other performance based compensation arrangements with its investment managers.

MODIFIED FROM RISK-MITIGATING HEDGING TRADING ACTIVITIES REQUIREMENTS

The agencies indicate in the preamble that these requirements are based on the requirements for the risk-mitigating hedging exemption for trading activities, but have been modified to reflect the more limited scope of the risk-mitigating hedging exemption for covered fund activities.
**PERMITTED ACTIVITIES**

**Offshore Exemption: Sponsorship of or Investments in a Covered Fund by a Foreign Organized or Located Banking Entity with a Foreign Top Tier Parent**

### U.S. BANKING ENTITY

- **Is the banking entity located in the U.S. or organized or directly or indirectly controlled by a banking entity organized under U.S. law?**
  - **NO**
  - **4(C)(9) OF THE BHC ACT**
    - **Is the sponsorship of or acquisition or retention of an ownership interest in the covered fund by the foreign organized or located banking entity conducted or maintained pursuant to the exemptions for offshore activities and investments contained in Section 4(c)(9) of the BHC Act?**
      - **NO**
      - **NOT A PERMITTED ACTIVITY UNDER OFFSHORE EXEMPTION**
    - **YES**
    - **PERMITTED FOREIGN ACTIVITY**
  - **YES**

### OFFER OR SALE TO U.S. RESIDENT

- **Is any ownership interest in a covered fund sold pursuant to an offering that targets “residents of the United States”?**
  - **NO**
  - **US. PERSONNEL**
    - **Is any sponsorship of a covered fund performed or is an ownership interest in a covered fund acquired or retained solely by a foreign organized or located banking entity with a foreign top tier parent?**
      - **The banking entity acting as sponsor, or engaging as principal in the acquisition or retention of an ownership interest in the covered fund, must not be a U.S. Organized or Located Banking Entity or controlled directly or indirectly by a banking entity organized under U.S. law.**
      - **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 must not be a U.S. Organized or Located Banking Entity.**
      - **The investment or sponsorship, including any transaction arising from risk-mitigating hedging related to an ownership interest, must not be accounted for as principal directly or indirectly on a consolidated basis by any U.S. Organized or Located Banking Entity.**
      - **No financing for the banking entity’s ownership or sponsorship may be provided, directly or indirectly, by a U.S. Organized or Located Banking Entity.**
    - **YES**
    - **SOLELY OUTSIDE THE U.S.**
      - **The agencies indicate in the preamble that such personnel may engage in “back office” activities in connection with one or more covered funds.**
      - **This allows administrative services or similar functions to be provided by such personnel to a covered fund as an incident to activity conducted under the offshore exemption (such as clearing and settlement, maintaining and preserving records of the fund, furnishing statistical and research data, or providing clerical support for the fund).**
      - **The agencies indicate in the preamble that the personnel of any U.S. Organized or Located Banking Entities with a foreign top tier parent are permitted to act as investment adviser to a covered fund in certain circumstances.**
        - **For instance, such personnel may provide investment advice and recommend investment selections to the manager or general partner of a covered fund so long as that investment advisory activity in the U.S. does not result in such personnel participating in the control of the covered fund or offering or selling an ownership interest to a resident of the U.S.**
      - **The agencies indicate in the preamble that the sponsor of a foreign fund would not be viewed as “targeting” residents of the U.S. if all of the following are true:**
        - **It conducts an offering directed to residents of one or more countries other than the U.S.**
        - **It includes in the offering materials a prominent disclaimer that the securities are not being offered in the U.S. or to residents of the U.S.**
        - **It includes other reasonable procedures to restrict access to offering and subscription materials to persons that are not residents of the U.S.**
      - **Target Residents of the U.S.**
        - **The agencies indicate in the preamble that the sponsor of a foreign fund would not be viewed as “targeting” residents of the U.S. if all of the following are true:**
          - **It conducts an offering directed to residents of one or more countries other than the U.S.**
          - **It includes in the offering materials a prominent disclaimer that the securities are not being offered in the U.S. or to residents of the U.S.**
          - **It includes other reasonable procedures to restrict access to offering and subscription materials to persons that are not residents of the U.S.**

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PERMITTED ACTIVITIES
Regulated Insurance Companies

An insurance company or its affiliate is permitted to acquire or retain an ownership interest in or sponsor a covered fund if the activity satisfies the following conditions:

FOR A GENERAL OR SEPARATE ACCOUNT
Did the insurance company or its affiliate acquire or retain the ownership interest solely for the general account of the insurance company or for one or more separate accounts established by the insurance company?

SUBJECT TO INSURANCE REGULATION
Was the acquisition and retention of the ownership interest conducted in compliance with, and subject to, the insurance company investment laws, regulations and written guidance of the jurisdiction in which the insurance company is domiciled?

INSURANCE REGULATION NOT DEEMED INSUFFICIENT
Have the Federal banking agencies, after consultation with the FSOC and the relevant insurance commissioners, jointly determined, after notice and comment, that a particular insurance company investment, law, regulation or written guidance with respect to which the acquisition or retention of the ownership interest is in compliance and subject, was insufficient to protect the safety and soundness of the banking entity or the financial stability of the United States?

NOT A PERMITTED ACTIVITY UNDER INSURANCE COMPANY EXEMPTION

“INSURANCE COMPANY”
A company that is organized as an insurance company, is primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of the Volcker Rule.

“GENERAL ACCOUNT”
All of the assets of an insurance company except those allocated to one or more separate accounts.

“SEPARATE ACCOUNT”
An account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company’s other assets, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

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DO THE “SUPER 23A” RESTRICTIONS APPLY?

No banking entity or its affiliate that serves, directly or indirectly, as the investment adviser, investment manager, commodity trading advisor, or sponsor to a covered fund, or that organizes and offers a covered fund under the asset management or ABS issuer exemption, or that retains an ownership interest under the ABS issuer exemption, may enter into a transaction with the covered fund, or with any other covered fund controlled by such covered fund, that would be a covered transaction as defined in Section 23A of the Federal Reserve Act as if the banking entity were a member bank and the related covered fund were its affiliate.

**BANKING ENTITY RELATIONSHIP TO COVERED FUND**

- Investment adviser
- Investment manager
- Commodity trading advisor
- Sponsor
- Organize and offer pursuant to asset management exemption
- Organize and offer or hold an interest under the ABS issuer exemption

**FIRST-TIER FUND**

- Enter into covered transactions

**SECOND-TIER FUND**

- Enter into covered transactions

**“COVERED TRANSACTIONS”**

- Loans or other extensions of credit to the covered fund
- Purchases of or an investment in securities issued by the covered fund, other than ownership interests that are acquired or retained in accordance with the final rules implementing the Volcker Rule
- Acceptance of securities or other debt obligations issued by the related covered fund as collateral security for a loan or extension of credit to any person or company, except as provided by the agencies in the preamble
- Purchases of assets, including assets subject to a repurchase agreement, from a covered fund, except certain real estate assets
- Issuances of guarantees, acceptances or letters of credit, including an endorsement or standby letter of credit, on behalf of the covered fund
- Any credit exposure to the covered fund arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction with the covered fund

**NOT A COVERED TRANSACTION**

- The agencies stated in the preamble that an extension of credit to a third party secured by ownership interests in a related covered fund is not a covered transaction under Super 23A, unless the third party is a related covered fund.

**SECTION 23B**

- Any banking entity that would be prohibited from entering into a covered transaction with a related covered fund pursuant to Super 23A is subject to Section 23B of the Federal Reserve Act with respect to any of the following transactions as if the banking entity were a member bank and the related covered fund were its affiliate:
  - Sale of securities or other assets to a related covered fund, including assets subject to an agreement to repurchase
  - Payment of money or the furnishing of services to a related covered fund under contract, lease or otherwise
  - Any transaction in which a related covered fund acts as an agent or broker or receives a fee for its services to the banking entity or any other person
  - Any transaction or series of transactions with a third party if a related covered fund has an interest in the third party or if a related covered fund is a participant in such transaction or series of transactions
- Any transaction that would be subject to Super 23A but for the exception for prime brokerage transactions is also subject to the requirements in Section 23B of the Federal Reserve Act as if the banking entity were a member bank and the related covered fund were its affiliate.
Would the transaction, class of transactions or activity:

- Involve or result in the banking entity’s interests being materially adverse to the interests of its clients, customers or counterparties?
  - Yes
  - No

- Result, directly or indirectly, in a material exposure by the covered banking entity to a high-risk asset or a high-risk trading strategy?
  - Yes
  - No

  - “High-risk asset” means an asset or group of related assets that would, if held by a banking entity, significantly increase the likelihood that the banking entity would incur a substantial financial loss or would pose a threat to the financial stability of the United States.
  - “High-risk trading strategy” means a trading strategy that would, if engaged in by a banking entity, significantly increase the likelihood that the banking entity would incur a substantial financial loss or would pose a threat to the financial stability of the United States.

- Pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States?
  - Yes
  - No

- The transaction, class of transactions or activity is permitted
  - Yes
  - No

**Exception 1: Timely and Effective Disclosure and Opportunity to Negate/Substantially Mitigate**

Before effecting the specific transaction or class or type of transactions, or engaging in the specific activity, does the banking entity:

- Make clear, timely, and effective disclosure of the conflict of interest, together with other necessary information, in reasonable detail and in a manner sufficient to permit a reasonable client, customer, or counterparty to meaningfully understand the conflict of interest; and
- Make such disclosure explicitly and effectively, and in a manner that provides the client, customer, or counterparty the opportunity to negate, or substantially mitigate, any materially adverse effect on such party created by the conflict?

- Yes
- No

**Exception 2: Information Barriers**

Has the banking entity established, maintained, and enforced information barriers that are memorialized in written policies and procedures, such as physical separation of personnel, or functions, or limitations on types of activity, that are reasonably designed, taking into consideration the nature of the banking entity's business, to prevent the conflict of interest from involving or resulting in a materially adverse effect on a client, customer, or counterparty?

- Yes
- No

Note that the banking entity may not rely on information barriers if it knows or reasonably should have known that notwithstanding these barriers, the conflict of interest may involve or result in a materially adverse effect on a client, customer, or counterparty.

**THE TRANSACTION, CLASS OF TRANSACTIONS OR ACTIVITY IS PROHIBITED EVEN IF IT WOULD OTHERWISE QUALIFY AS A PERMITTED ACTIVITY**
**Conformance Period**

**One-Year General Extension Until July 21, 2015**

- Each banking entity is expected to engage in good-faith efforts, appropriate for its activities and investments, that will result in the conformance of all of its activities and investments to the requirements of the Volcker Rule by no later than the end of the conformance period, including:
  - Evaluating the extent to which the banking entity is engaged in covered activities
  - Implementing a conformance plan that is "appropriately specific" about how the banking entity will fully conform.

- Activities and investments should not be expanded during the conformance period with an expectation that additional time for conformance will be granted.

**Conformance Period Generally**

- Applies to all covered investments and relationships. Initial 2-year conformance period, 1-year general extension granted upon adoption of final rule, and up to two 1-year extensions available for any activity, investment or relationship that may be prohibited or restricted by the Volcker Rule.

- Illiquid funds. Up-to-5-year extended conformance period available only for certain investments in “illiquid funds” in existence on May 1, 2010.

- Extensions granted separately, run consecutively. Banking entities must apply separately for each extension, at least 180 days prior to the expiration of any subsequent extension period.

- Industry-wide 1-year extension: Uses up one of the three statutory 1-year extensions available to the Federal Reserve Board in the Dodd-Frank Act.

**Establish Compliance Program by End of Extended Conformance Period**

- The one-year general extension of the conformance period was intended to give markets and firms an opportunity to adjust to the prohibitions and requirements and any implementing rules.

- Each banking entity must establish the compliance program required for that entity as soon as practicable and in no case later than the end of the conformance period.

**Factors for Granting of Extensions by Federal Reserve**

Applications considered in light of all facts and circumstances, including but not limited to:

- Market conditions
- Degree of control held by the banking entity over investment decisions of the fund
- Whether any assets that were illiquid when first acquired have become liquid
- Expected wind-up / liquidation date of fund
- Cost to banking entity of divesting or disposing of the activity or investment within the applicable period
- Prior efforts to divest or conform the activity or investment
- Any other factor the Federal Reserve believes appropriate

**Extended Conformance Period for Certain Investments in “Illiquid Funds”**

- Basic eligibility criteria: In order for a banking entity to be eligible for the up-to-5 year extended conformance period to retain or make additional investments in an illiquid fund:
  - The fund must be a covered fund that as of May 1, 2010 was either principally invested in illiquid assets or invested to some degree and contractually committed to principally invest in illiquid assets; and
  - The investment must be necessary to fulfill a contractual obligation of the banking entity to retain or make additional investments that was in effect on May 1, 2010

- Illiquid assets. Any asset that either:
  - Is not defined as a “liquid” asset, which in turn is defined as cash; assets traded on regulated exchanges or certain other markets with a sufficient volume of bids and offers to permit near instantaneous pricing reasonably related to the last sales price or a current competitive bid; assets traded on recognized inter-dealer quotation or similar systems with competitive bids and offers from multiple dealers; assets with prices routinely quoted in widely disseminated publications; certain short-term debt obligations; and any other asset designated by the Federal Reserve as liquid, or
  - Cannot be transferred because of statutory, regulatory or contractual restrictions on transfer

- Principally invested. A covered fund must have invested at least 75% of its consolidated assets in illiquid assets or risk-mitigating hedges related to such assets

- Contractual obligation. A contractual obligation to retain or make additional investments exists if the banking entity is prohibited from redeeming or transferring all ownership interests in a covered fund

- Necessary. An investment is deemed to be necessary to fulfill a contractual obligation only if the banking entity has no unilateral power to terminate the obligation and, if the consent of a general partner or other third party is needed, has used its reasonable best efforts to obtain such consent and such consent has been denied.
Questions?

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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