

Review of Volcker Rule Comment Letters

October 11, 2017

Introduction

The Office of the Comptroller of the Currency (the “OCC”) took a first formal step in evaluating how the regulations implementing the Volcker Rule should be revised by issuing a request for public input in early August. The OCC specifically requested comment on how the scope of the implementing regulations, the proprietary trading provisions, the covered fund provisions, and the compliance and metrics requirements could be revised to decrease burdens for firms subject to the Volcker Rule while better accomplishing the purposes of the statute.

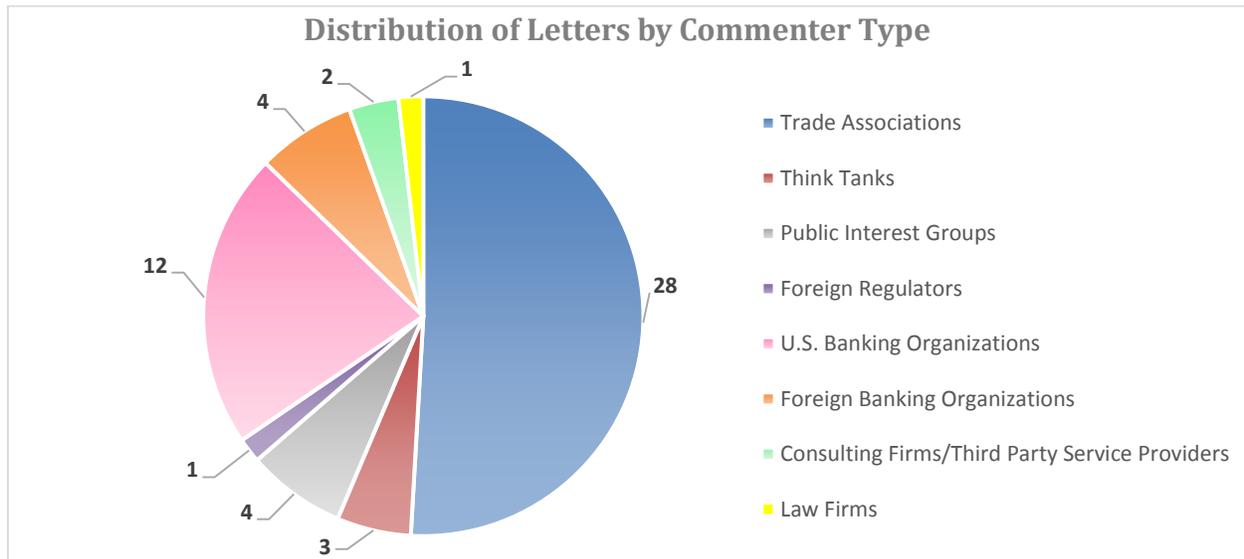
Comments were due September 21, 2017.

Comment Letters

As of October 10, 2017, 67 comment letters had been posted by the OCC on its website.¹ Fifty-five letters were submitted by organizations and 11 by individuals. We summarize the key aspects of the letters submitted by institutional commenters, including a description of the types of commenters and, at a high-level, the comments relating to each of the core topics highlighted by the OCC in its request for input. The appendix to this summary sets out the specific recommendations made by each institutional commenter. Comment letters submitted by individuals can be found [here](#).

Type of Commenter

The distribution of these letters by commenter type is illustrated in the pie chart below:



¹ One form letter was submitted in substantially identical form 8,441 times. The sample of this letter posted by the OCC was submitted by an individual, but the identities of the others that submitted this letter are not available. Therefore, we have not included it in our summary of the institutional letters.

Summary of Directional Recommendations

The vast majority of the institutional comment letters support narrowing the scope of the rule's proprietary trading or covered fund restrictions (48 letters or 87% of the letters). Many letters argue that the current regulations are overbroad, excessively complex, difficult to interpret and apply, and result in unnecessary compliance burdens, and that the Volcker Rule should not apply at all to certain institutions.² For example, the letter submitted by the Independent Community Bankers of America (the "ICBA") notes that while "ICBA was generally supportive of the rule . . . ever since the Volcker Rule was issued, community banks have had problems and concerns with it. . . . For instance, even though bona fide hedging activities are considered exempt under the rule, community banks have had to hire consultants when engaging in interest rate swaps and other hedging activity to make sure that they comply with the rule."³

Some letters argue that the existing regulations have been harmful to markets, the financial system and the economy.⁴ For example, the American Investment Council notes that "the Final Regulations have affected our members by making it more difficult for us to raise funds from investors—like non-U.S. banks, investing from abroad,"⁵ and the Mid-Size Bank Coalition of America contends that "[s]ince the Volcker Rule was promulgated . . . it has become generally recognized that that the [Volcker] Rule is significantly overbroad and has imposed compliance burdens that outstrip its benefits to the safety and soundness of banking organizations and U.S. financial stability. This is particularly true with respect to [mid-size banks], whose businesses principally focus on traditional commercial and consumer banking activities" and for whom the Volcker Rule has "hindered their ability to provide credit to and otherwise serve their communities."⁶

Seven letters support maintaining or strengthening the existing rule. A few of those letters argue that evidence has not shown that the existing rule has a negative effect on market liquidity or otherwise, and argue that the current or a strengthened rule is necessary to promote the purposes of the statute.⁷

The graphical illustration below summarizes the number of institutional comment letters in favor of or against narrowing the Volcker Rule generally, for or against narrowing the scope of the proprietary trading and covered fund restrictions, and for or against reducing the rule's compliance burden.

² *E.g.*, Letter by Norway Savings Bank at 2 ("The regulators should not be wasting time discussing this with us and excluding smaller banks from the scope of applicability of The Rule would be a simple way to remedy that"); Letter by Huntington National Bank at 2 ("In its current form, the Volcker Rule is unduly difficult to interpret, overly broad and restrictive in application, and unduly burdensome to comply with"); Letter by the Investment Adviser Association at 1 ("the Volcker Regulations go far beyond the purpose and intent of the Statute, unnecessarily constraining the activities of banks and their affiliates, including many of our investment adviser members"); Letter by the Competitive Enterprise Institute at 2 ("While the Volcker Rule attempts to address legitimate concerns about financial risk and stability, it has merely doubled down on a failed approach, imposing more regulation to mitigate problems created by past regulation"); *see also* Letter by the American Bankers Association; Letter by the Institute of International Bankers; Letter by the Securities Industry and Financial Markets Association; Letter by The Clearing House Association L.L.C.

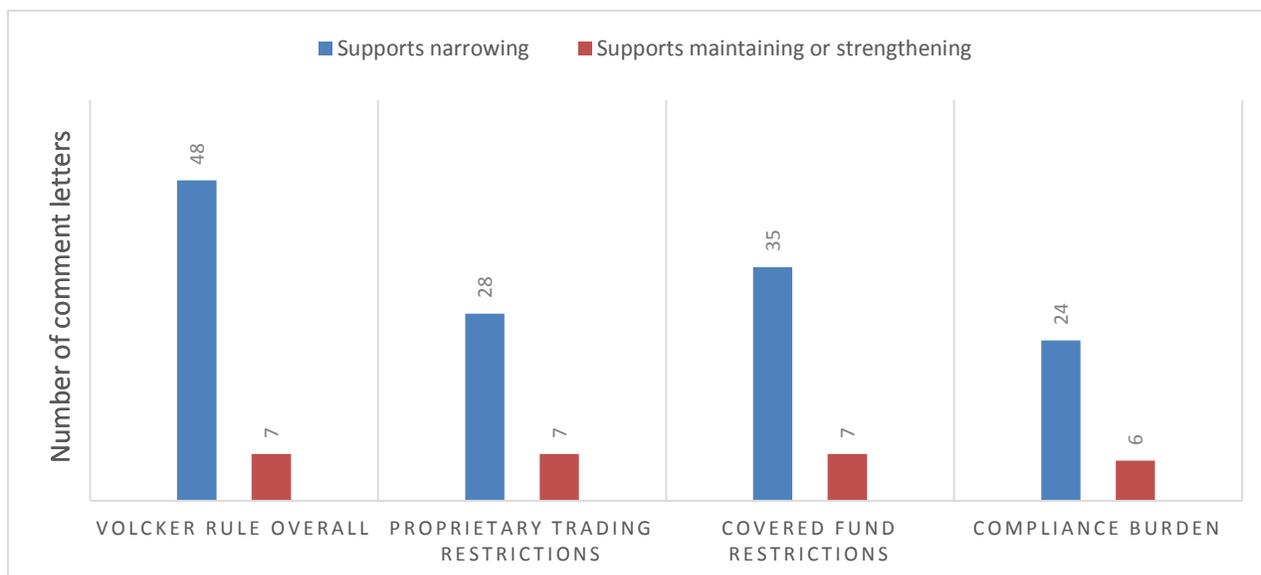
³ Letter by the Independent Community Bankers of America at 2.

⁴ *E.g.*, Letter by the U.S. Chamber of Commerce Center for Capital Markets Competitiveness at 3–8 (arguing the "Volcker Rule Has Reduced Market Liquidity and Hurt Main Street Businesses").

⁵ Letter by the American Investment Council at 1.

⁶ Letter by the Mid-Size Bank Coalition of America at 1–2.

⁷ *E.g.*, Letter by Better Markets, Inc.; Letter by the Center for American Progress; Letter by Occupy the SEC; Letter by Public Citizen.



Summary of Comments by Topic

Proprietary Trading

Twenty-eight of 35 letters (80%) addressing the scope of the rule’s proprietary trading restrictions support narrowing them in some respect. Twenty-one letters recommend amending the definition of the term “trading account.” Ten letters specifically recommend revising the definition of proprietary trading to prohibit only short-term, standalone proprietary trading. Fourteen letters specifically support easing the rule’s requirements relating to “reasonably expected near-term demand” (RENTD) for underwriting and market-making permitted activities.

Covered Funds

Thirty-five of 42 letters (83%) addressing the scope of the covered fund provisions of the rule recommend narrowing them in some respect. Twenty-eight letters recommend narrowing the scope of the rule’s definition of covered fund, with 13 letters recommending that the current definition be further limited to include only private funds principally engaged in short-term proprietary trading of financial instruments. Twenty-seven letters recommend adding additional or revising existing exclusions to the definition of covered fund, such as revising the exclusions for foreign public funds and securitizations, and adding an exclusion for family wealth vehicles.

Fourteen letters recommend clarifying and narrowing the scope of the Super 23A prohibition, such as by excluding transactions that are excluded for purposes of Regulation W (10 letters) or by clarifying and expanding the scope of the prime brokerage exemption (5 letters).

In addition, 12 letters support narrowing the definition of ownership interest, typically so that it is limited to equity or equity-like interests and does not capture ordinary debt securities.

Compliance and Scope

A sizeable portion of the letters (24 letters or 80%) of those addressing the separate compliance requirements expressly advocate changes to the rule’s separate compliance requirements to reduce the burden imposed by the Volcker Rule on banking entities subject to the rule.

Many letters (32 letters) propose narrowing the scope of entities subject to the Volcker Rule, such as by excluding certain foreign or domestic funds from the definition of banking entity (17 letters). Eight letters propose exempting banks below a certain asset size, such as community banks—i.e., banks with less than \$10 billion in assets (4 letters).

Next Steps

The next step will be for regulators to consider these comments as they revisit the Volcker Rule implementing regulations.

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Appendix: Review of Volcker Rule Comment Letters

This is intended to supplement the general summary of Volcker Rule comment letters that were submitted to the OCC.

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Trade Associations

- American Bankers Association (ABA)
- American Investment Council
- Canadian Bankers Association
- Community Bankers Association of Illinois
- Community Development Venture Capital Alliance
- CRE Finance Council
- CRE Finance Council, MBA, NAHB, The Real Estate Roundtable, National Multifamily Housing Council, et al.
- European Banking Federation
- European Fund and Asset Management Association
- Financial Services Roundtable
- Independent Community Bankers of America (ICBA)
- Institute of International Bankers (IIB)
- Insurance Coalition
- International Swaps and Derivatives Association (ISDA)
- Investment Adviser Association
- Investment Company Institute (ICI)
- Japanese Bankers Association
- Loan Syndications and Trading Association
- Mid-Size Bank Coalition of America
- Mortgage Bankers Association (MBA)
- National Venture Capital Association
- Property Casualty Insurers Association of America
- Risk Management Association – Committee on Securities Lending
- Securities Industry and Financial Markets Association (SIFMA)
- Small Business Investor Alliance (SBIA)
- Structured Finance Industry Group
- The Clearing House Association (TCH)
- U.S. Chamber of Commerce – Center for Capital Markets Competitiveness

U.S. Banking Organizations

- BBVA Compass Bancshares, BMO Financial Corp., Capital One, CIT Bank,

N.A., Citizens Financial Group, Inc., Discover Financial, et al.

- Beneficial State Bank
- BMO Financial Group
- BOK Financial
- Charles Schwab
- Chatham Financial Corporation, Atlantic Capital Bank, Blue Hills Bank, et al.
- EnerBank USA
- Huntington National Bank
- Norway Savings Bank
- State Street Corporation
- Stifel Financial Corporation
- Teachers Insurance and Annuity Association of America (TIAA)

Foreign Banking Organizations

- CITIC Group Corporation
- Credit Suisse (Covered Funds)
- Credit Suisse (Proprietary Trading)
- Mitsubishi UFJ Financial Group, Inc.

Public Interest Groups

- Better Markets, Inc.
- Jubilee USA
- Occupy the SEC
- Public Citizen

Think Tanks

- American Action Forum
- Center for American Progress
- Competitive Enterprise Institute

Consulting Firms / Third-Party Service Providers

- Data Boiler Technologies, LLC
- MB Schoen & Associates, Inc.

Foreign Regulators

- Financial Services Agency Government of Japan & Bank of Japan

Law Firms

- Simpson Thacher & Bartlett LLP

Trade Associations

American Bankers Association (ABA)

Proprietary Trading

- **Trading Account Definition.** Define proprietary trading as standalone, speculative trading principally for the purpose of selling in the near term.
- **Rebuttable Presumption.** Eliminate the rebuttable presumption that financial positions held for fewer than 60 days constitutes proprietary trading. Complementary to eliminating the rebuttable presumption, the Volcker Agencies further should establish a safe harbor for:
 - Securities that are held available-for-sale or held-to-maturity;
 - Derivative positions that are designated as accounting hedges under Financial Accounting Standards Board ASC 815 (Derivatives and Hedging);
 - Positions that receive banking book and not market risk rule capital treatment; and
 - Any positions held longer than 60 days.
- **Rebuttable Presumption.** Eliminate the concept of “substantial transfer of risk” under the rebuttable presumption when determining whether proprietary trading is involved.
- **RENTD.** Interpret the RENTD requirement of the statute as being satisfied by financial intermediation activities, such as market making and underwriting, that are conducted in accordance with each bank’s existing prudential framework. In the alternative, a framework may be designed such that RENTD is only one of several factors, including the firm’s risk-tolerance statement and other prudential risk management processes, which inform the risk management function of the banking entity.
- **Exclusions and Permitted Activities.** Ensure that exclusions or safe harbors from proprietary trading are implemented in a fashion upon which banks may reasonably rely.

Covered Funds

- **Definition of Covered Fund.** Limit the definition of covered fund to those Section 3(c)(1) and Section 3(c)(7) funds that are engaged primarily in short-term proprietary trading.
- **Covered Fund Exclusions.** Preserve and revise the exclusions from covered fund to identify further those funds that should not be treated as covered funds, such as venture capital funds, foreign retail and public funds, debt securitizations, public welfare investment entities and foundations, and wealth management vehicles. These vehicles typically rely on Section 3(c)(1) or Section 3(c)(7) in order to avoid being classified as an investment company, but should not be penalized simply for relying on a federal securities law exemption unrelated to the Volcker Rule.
- **Ownership Interest Definition.** Narrow the definition of ownership interest to apply only to equity or equity-like interests that are widely understood to indicate a bona fide ownership interest in a covered fund.
- **Super 23A.** Construe a covered transaction under Super 23A to include the list of prohibited transactions contained in Section 23A(a)(7) of the Federal Reserve Act, as qualified by the list of excluded transactions set forth in Section 23A(d), which under Regulation W includes intraday extensions of credit to an affiliate.

Scope

- **Systemic Risk Standard.** Apply the implementing regulations’ requirements only to those banking entities that meet the prevailing systemic risk standard, as defined by the Volcker Agencies under the implementing regulations (e.g., by institution, products, or practices), refined by regulatory interpretation as necessary and appropriate. Permit all other banking entities to demonstrate compliance with the statute through the normal supervisory and examination process.
- **Consistent Treatment.** Any amendments to the implementing regulations should result in banks being treated consistently with their affiliates.

Compliance

- Compliance Program.
 - Eliminate any prescriptive regulatory or supervisory requirements or expectations with respect to Volcker Rule board committees and annual effectiveness reviews and reports. Each bank ought to develop Volcker Rule compliance controls as part of its general risk management process.
 - Afford banks more flexibility in establishing and implementing a compliance program, consistent with their prudential framework and risk management practices.
- Metrics. Eliminate the metrics requirements under Appendix A.
- Agency Coordination.
 - Designate one agency to examine the entire firm for Volcker Rule compliance in order to avoid inconsistent agency supervision and examination.
 - Explore the establishment of interagency examination procedures, perhaps through the Federal Financial Institutions Examination Council, so that a common set of supervisory and examination procedures can be established and applied across the entire banking industry.
- [Full text of comment letter](#)

American Investment Council

Covered Funds

- Codify FAQ 13. Codify FAQ 13 to clarify that the marketing restriction only applies to the activities of a foreign bank and not of unaffiliated third-party sponsors.
- Clarify Wholly-Owned Subsidiary Exception. Clarify the wholly-owned subsidiary exception to the covered fund definition to make clear that this exception does not apply in the case of a bona fide investment, including a 100% investment, made in a pooled investment vehicle that is offered, advised or sponsored by a third-party sponsor.
- Private Equity Funds.
 - Reconsider how private equity funds are treated under the covered fund provisions, under a view that they are “not a means of evading the Volcker Rule’s proprietary trading provisions and should not be treated as such.”
 - Ensure consistent treatment of pooled vehicles that have long-term investment strategies and in which investors do not have redemption rights.
 - Create mechanisms that make it easier for banking entities to make permissible investments in third-party sponsored vehicles.
 - Minimize interference with, and compliance burdens imposed on, non-bank fund sponsors.

Scope

- Foreign Excluded Funds. Exclude foreign excluded funds from the definition of banking entity.
- [Full text of comment letter](#)

Canadian Bankers Association

Scope

- Foreign Excluded Funds. Exempt foreign excluded funds, as defined in the July 21, 2017 statement by the Volcker Agencies, from the definition of banking entity, even if they are controlled by a banking entity due to sponsorship or investment by the banking entity.
- [Full text of comment letter](#)

Community Bankers Association of Illinois

Scope

- Community Banks. Exempt community banks from the Volcker Rule.
- [Full text of comment letter](#)

Community Development Venture Capital Alliance

Covered Funds

- Public Welfare Exclusion. Revise the regulations to make clear that community development venture capital funds benefit from the public welfare exclusion and are not subject to the Volcker Rule's covered funds prohibition.
- [Full text of comment letter](#)

CRE Finance Council

Proprietary Trading

- Trading Account Definition. Define proprietary trading as speculative, short-term standalone proprietary trading through the implementing regulations' definition of trading account.
- Permitted Activities. Present the permitted activities as examples of what is not proprietary trading and streamline them. View permitted activities, including market making, underwriting and risk-mitigating hedging, as examples of activity that Congress explicitly deemed not to be proprietary trading, rather than as exemptions from the prohibition on proprietary trading that contain multiple requirements not set forth in the statute. Provide banking entities the flexibility to perform these services and activities, rather than requiring banking entities to comply with an onerous set of prescriptive requirements that are not found in the statutory text and that are not sufficiently attuned to the substance of the businesses they seek to regulate.
- RENTD. Interpret RENTD, in the context of market making and underwriting, as financial intermediation conducted in accordance with each banking entity's prudential risk tolerance. In the alternative, a framework may be designed such that RENTD is only one of several factors, including the firm's risk-tolerance statement and other prudential risk management processes, that inform the risk management function of the banking entity.

Covered Funds

- Definition of Covered Fund. Revise the definition of covered fund so that it is limited to an entity that would be an investment company, as defined in the Investment Company Act of 1940, but for Section 3(c)(1) or 3(c)(7) of that Act, that is principally engaged in short-term proprietary trading of financial instruments, defined as trading conducted by the entity for the primary purpose of generating profits from short-term price movements.
- Loan Securitization Exclusion. Modify the loan securitization exclusion to permit limited holdings of debt securities or synthetic instruments in addition to loans (e.g., 20%).
- Market Making and Underwriting. Revise the covered funds market making and underwriting permitted activities to eliminate the requirements that covered fund ownership interests held in a permissible market-making or underwriting capacity count toward the 3% per-fund and aggregate ownership limitations and are subject to capital deductions.

Compliance

- Compliance Program.
 - Simplify the prescriptive compliance obligations of the proprietary trading and covered funds provisions and Section 20 of the implementing regulations.
 - Remove Appendix B of the implementing regulations.
- Trading Desk Design. Replace the trading desk concept with business unit and allow banking entities to determine the proper level of organization.
- Agency Coordination. Require the Volcker Agencies to more formally coordinate interpretation and examination of the Volcker Rule, with one agency taking the lead.
- Metrics. Eliminate the quantitative metrics regime of Appendix A of the implementing regulations.
- [Full text of comment letter](#)

CRE Finance Council, MBA, NAHB, The Real Estate Roundtable, National Multifamily Housing Council, et al.

- Revise the implementing regulations to:
 - Facilitate greater discretion and flexibility in making markets and hedging;
 - Limit applicability to those firms with complex trading businesses; and
 - Streamline compliance and reporting requirements, including leveraging current risk-based reporting formats and tailoring requirements to trading-based businesses.
- [Full text of comment letter](#)

European Banking Federation

Scope

- Foreign Excluded Funds. Revise the implementing regulations to:
 - Create a category for qualifying foreign excluded funds that would parallel the definition used in the July 21, 2017 interpretive relief, with certain modifications.
 - Exclude qualifying foreign excluded funds from the banking entity definition.
- Extraterritoriality. Revise the implementing regulations to have, in their entirety, limited applicability outside the United States for non-U.S. banking entities, in the mold of Bank Holding Company Act Sections 4(c)(9) and 4(c)(13) such that:
 - For non-U.S. banking entities, all activities permitted for qualifying foreign banking organizations under the regulations implementing Bank Holding Company Act Sections 4(c)(9) and 4(c)(13), i.e., the Federal Reserve's Regulation K, should be exempt from the Volcker Rule; and
 - Per the statute, to the extent that Section 4(c)(9) or 4(c)(13) would permit a non-U.S. banking entity to engage in proprietary trading or covered fund activities in the United States, such activity would not be exempt from the Volcker Rule's prohibitions in reliance on the solely outside of the United States ("**SOTUS**") exemptions.
- [Full text of comment letter](#)

European Fund and Asset Management Association

Scope

- Foreign Excluded Funds. Exclude foreign funds not only from the definition of covered fund, but also from the definition of banking entity.
- [Full text of comment letter](#)

Financial Services Roundtable

- ❖ Supports comment letters filed by TCH, the ABA and SIFMA.

Proprietary Trading

- Trading Account Definition.
 - Supports the position of TCH, the ABA and SIFMA to refocus the definition of trading account on standalone proprietary trading. Alternatively, grant wholesale exemptions for banking book activities.
 - Narrow the status test.
- Rebuttable Presumption. Eliminate or reverse the rebuttable presumption.
- RENTD. RENTD requirement should be satisfied through back-to-back derivative transactions.

Covered Funds

- Definition of Covered Fund. Limit the definition of covered fund only to Section 3(c)(1) or 3(c)(7) funds that engage in prohibited proprietary trading. Alternatively, use authority to interpret the terms “hedge fund” and “private equity fund” in a manner that is simpler, easier to comply with, and includes clear safe harbors.
- Ownership Interest Definition. Limit to physical shares in the equity tranche of a covered fund.
- Family Wealth Vehicles. Exclude from the definition of covered fund retail family trusts and single-investor vehicles that are created by, or on the order of, a customer.
- Foreign Public Funds. Simplify the requirements for an excluded foreign public fund—in particular, remove the requirement to attribute ownership interests of employees and directors (and their immediate family members) to the banking entity.
- Aggregate Limit. Remove the requirement to aggregate publicly traded (and liquid) covered funds positions (held in a dealing or underwriting capacity) into the 3% limit (against tier 1 capital).
- Super 23A. Interpret Super 23A requirements to include an exemption that is consistent with Regulation W.
- Name-Sharing Prohibition. Repeal naming prohibition.

Scope

- Exemption. Exempt institutions that score below a certain threshold on size, complexity and interconnectedness.

Compliance

- Compliance Program. Replace the \$50 billion asset threshold in Appendix B with a threshold that accounts for a company’s activities and risk profile. Alternatively, raise the threshold to substantially higher than \$50 billion.
- Metrics. Replace metrics reporting regime with an overall supervisory review and compliance program. If the metrics requirement is retained, modify metrics reporting by eliminating customer-facing measurements, only require risk management measurements and source of revenue measurements, and make reporting quarterly.
- Agency Coordination. Designate the Federal Reserve as lead agency for writing and interpreting the Volcker Rule.
- Attestation. Streamline, with standardized language, the CEO attestation requirement.
- [Full text of comment letter](#)

Independent Community Bankers of America (ICBA)

Scope

- Asset Size Exemption. All banking institutions with assets less than \$50 billion should be exempted from the Volcker Rule.
- [Full text of comment letter](#)

Institute of International Bankers (IIB)

Proprietary Trading

- Trading Account Definition. Reverse the current presumption that each purchase or sale is deemed to be a proprietary trade unless demonstrated to be outside of the trading account or otherwise excluded from the definition of proprietary trading in favor of a principles-based approach that narrowly defines and prohibits impermissible proprietary trading activity.
- Permitted Activities.
 - Restore the trading outside the United States (“TOTUS”) exemption to its originally intended scope by exempting trading activity by any non-U.S. banking entity that (i) is not directly or indirectly controlled by a banking entity organized in the United States and (ii) books the trading position and associated risk as principal outside the United States. Eliminate the restrictions on U.S. personnel arranging, negotiating and executing trades and on trades conducted with or through U.S. entities (including the foreign operations of U.S. entities).
 - Expand the exemption for trading in foreign sovereign debt to permit trading to the same extent as U.S. government debt and to permit trading in derivatives on foreign government obligations.
 - Categorically exempt activities and business units subject to banking book regulatory capital and accounting treatment from the definition of proprietary trading and, in particular, provide a categorical, principles-based exemption for treasury, funding, asset-liability management and similar functions.
 - Clarify that riskless principal derivative transactions are exempt from the Volcker Rule.
- Exclusions.
 - Exclude cross-currency swaps, FX funding swaps and other common cross-currency financing transactions that are the functional equivalent of currency repurchase agreements or lending transactions from the definition of proprietary trading.
 - Exclude identified banking products and participations in identified banking products from the definition of financial instrument.

Covered Funds

- Definition of Covered Fund. Replace the current definition of covered fund with an activities-based definition focused on private funds that engage primarily in short-term proprietary trading in order to implement the original purpose of the covered fund prohibition.
- Foreign Public Fund. Revise the foreign public fund exclusion to focus on the qualification of the fund in its jurisdiction of organization or principal foreign markets as eligible for retail sales, similar to the Volcker Rule’s treatment of registered investment companies (“RICs”) in the United States, rather than imposing specific conduct requirements based on the actual manner of the fund’s primary offering.
- Foreign Securitizations. Permit foreign banks to hold investments in foreign securitizations that are covered funds to the extent mandated by non-U.S. risk retention rules.
- Aggregate Limit. Confirm that limits on aggregate covered fund investments should be calculated based on global tier 1 capital, and should not be applied at the level of an international bank’s U.S. intermediate holding company.

- **Name-Sharing Prohibition.** Narrow the restriction on covered funds sharing a name with a banking entity or its affiliates.
- **Super 23A.** Align the Super 23A prohibition with Section 23A of the Federal Reserve Act and the Federal Reserve's Regulation W by:
 - Incorporating the exemptions from Section 23A and Regulation W into Super 23A; and
 - Clarifying that Super 23A does not reach transactions by an international bank, or its affiliate, acting outside the United States.

Scope

- **Extraterritoriality.** Limit the Volcker Rule's extraterritorial reach.
- **De Minimis U.S. Activities.** Exclude smaller banking organizations from the scope of the Volcker Rule. The threshold for such an exemption should be applied to international banks based on their U.S. assets and operations, thereby exempting international banks with limited assets or proprietary trading operations in the United States.
- **Non-Controlled Companies.** Exclude from the definition of banking entity non-consolidated, minority-owned and operationally non-controlled non-U.S. investee companies of an international bank subject to the Volcker Rule.
- **Foreign Equivalents to Merchant Banking.** Exclude from the definition of banking entity non-U.S. commercial investee companies comparable to U.S. merchant banking portfolio companies.
- **Foreign and Excluded Funds.** Exclude from the definition of banking entity:
 - Controlled, bona fide investment funds (pooled investment vehicles and managed accounts) that are excluded from the definition of covered fund because they are organized and offered outside of the United States; and
 - Funds that are organized and offered pursuant to another exclusion from the definition of covered fund (e.g., foreign public funds, loan securitizations, RICs, employees' securities companies, etc.).

Compliance

- **Agency Coordination.** Designate one prudential regulatory agency to have the lead role in developing and providing interpretive guidance and coordinate with the other Volcker Agencies in examination and enforcement.
- [Full text of comment letter](#)

Insurance Coalition

Compliance

- **Compliance Program.** Exclude permitted activities of a regulated insurance company from the scope of the Volcker Rule's compliance program requirement and exclude assets associated with these activities from the definition of total consolidated assets.
- [Full text of comment letter](#)

International Swaps and Derivatives Association (ISDA)

Proprietary Trading

- **Trading Account Definition.** Eliminate the purpose test and rebuttable presumption.
- **Permitted Activities.**
 - Restructure the focus of the Volcker Rule to identify classes of permitted activity rather than an overbroad blanket prohibition and a complex system of exemptions with detailed conditions.

- Focus solely on the core components of the permitted activities when determining whether a given banking activity constitutes proprietary trading. Include any activity aimed at facilitating the trades of customers, clients and counterparties in permitted market-making activity.
- Interpret the underwriting exemption to broadly facilitate the raising of capital—any activity that assists persons or entities in accessing the capital markets should be permitted, and any activities done in connection with a capital raise should likewise be permitted underwriting activity (e.g., interest rate or currency hedging transactions in connection with a bond issuance).
- Permit all transactions entered into in order to hedge a banking entity's risk exposures arising from market-making related and underwriting activities consistent with the banking entity's risk management program.
- Revise the Volcker Rule to acknowledge the benefit and purpose of the inter-dealer market and its role in the provision of market-making and underwriting services. Recognize that many transactions in the inter-dealer market may constitute and are part of a market-making business, risk-mitigating hedging activities, or both.
 - Style each of these categories of permitted activity as non-exclusive safe harbors so as to not unduly chill innovation and the development and delivery of new financial intermediation services, products, and models.
- Revise and simplify the risk-mitigating hedging exemption requirements, specifically, the overly burdensome and complex documentation regime and requirements related to ongoing monitoring, management, authorization and correlation should be removed.
- Permit all trading in U.S. and foreign government securities, and related derivatives without further restriction.
- **RENTD.** Give banks additional flexibility and latitude with respect to RENTD. Align the Volcker Rule with the Dodd-Frank statute by tying and simplifying the RENTD requirement to activity that is conducted in accordance with a banking entity's existing prudential regulatory framework.

Covered Funds

- **Definition of Covered Fund.** Revise the term covered fund so that it is limited to an entity that would be an investment company, as defined in the Investment Company Act of 1940, but for Section 3(c)(1) and 3(c)(7) of that Act, that is principally engaged in short-term proprietary trading of financial instruments, defined as trading conducted by the entity for the primary purpose of generating profits from short-term price movements—for example, and as discussed in the introduction above, merger arbitrage or macro securities and currency trading desks.
- **Covered Fund Exclusions.** Clarify and retain existing exclusions for:
 - All foreign public funds that trade on a foreign exchange or similar trading facility should be excluded. Publicly traded non-U.S. funds should be treated similar to U.S. publicly traded mutual funds.
 - Family investment trusts or vehicles and single investor vehicles created for or by a single client (and their affiliates) should be excluded from the definition of covered fund.
- **Market Making Restrictions.** The 3% tier 1 capital limit on the ownership of covered funds, along with the required capital charges, should be eliminated.

Scope

- **Non-Controlled Entities.** Narrow the scope of entities subject to the Volcker Rule by using a U.S. GAAP/IFRS consolidation approach to ensure that the Volcker Rule only picks up entities where the top tier banking entity actually has the ability to control and to benefit from their trading.
- **Foreign Excluded Funds.** Temporary relief regarding qualifying foreign excluded funds should be made permanent by creating an additional exclusion from the definition of banking entity, including in light of the use of these funds as hedges for derivatives and other fund-linked product activity fully outside the United States.

Compliance

- Compliance Program.
 - Allow banking entities to leverage their existing regulatory compliance regimes, for example, in relation to market making and underwriting, and the Volcker Agencies could continue to rely on these compliance programs for their oversight.
 - Revise the implementing regulations to recognize the compliance processes and expertise that banking entities already have in place. Give deference to banks to tailor their compliance processes to their own specific business activities and risk profiles as already permitted by other U.S. laws, rules and regulations.
- Metrics. Eliminate the metrics requirements for underwriting, market making and risk-mitigating hedging that are not necessary for effective supervision. If maintained, require only a limited subset of metrics reporting among the Risk Management Metrics and Source of Revenue Measurements. Limit that subset of metrics (if required) only to market-making desks.
- Agency Coordination. Establish a coordinated regulatory program with a single point-of-contact.
- [Full text of comment letter](#)

Investment Adviser Association

- ❖ Supports SIFMA's comments as they relate to asset management.

Proprietary Trading

- Exclusions. Exclude prohibited proprietary trading transactions entered into for the purpose of developing products or services for asset management clients from the definition of proprietary trading.
 - Alternatively, permit this as trading on behalf of customers.
 - Alternatively, revise the exemption in the implementing regulations for trading on behalf of customers, which is currently drawn unworkably narrowly, to include transactions in financial instruments that a banking entity or its affiliates may enter into with a registered investment adviser affiliate for purposes of developing, testing, or delivering products or services to asset management clients.

Covered Funds

- Foreign Funds. Exclude all foreign funds, whether public or private, from the covered fund definition.
- Name-Sharing Prohibition. Eliminate the prohibition on name-sharing in the asset-management exemption from covered fund restrictions, or, at a minimum, modifying the prohibition to allow name-sharing with a separately-branded adviser.

Scope

- Registered Investment Companies. Exclude RICs from the definition of banking entity regardless of the percentage of ownership by a banking entity and regardless of if the banking entity provides investment advisory, commodity trading advisory, administrative, or other services to the RIC in accordance with applicable regulations.
- Foreign Funds. Exclude all foreign funds, whether public or private, from the definition of banking entity.
 - Clarify that foreign public funds are not banking entities, regardless of the percentage of banking entity ownership.
 - Codify the recent interpretive relief provided to foreign private funds that are not covered funds from the definition of "banking entity" based on a foreign bank's control of such funds through ownership or other relevant control factors.
- [Full text of comment letter](#)

Investment Company Institute (ICI)

Proprietary Trading

- Permitted Activities.
 - Evaluate ways to provide increased flexibility for market making-related activities.
 - Consider whether there are ways to achieve congressional objectives without creating unnecessary friction that affects how various entities, including dealers and their trading partners such as RICs, participate in the capital markets.

Covered Funds

- Foreign Public Funds. Simplify the exclusion for foreign public funds from the definition of covered fund. Eliminate the two predominance restrictions that make it more difficult to offer retail investment vehicles in the same manner and to the same extent as foreign banking organizations.
 - Do not treat a fund as a covered fund under the foreign public fund exclusion if it is:
 - Organized or formed under non-U.S. law,
 - Authorized for public sale to retail investors, and
 - Regulated as a public investment fund.

Scope

- Regulated Funds. Revise the definition of banking entity to exclude all regulated funds.
 - Provide express exclusions for RICs and for regulated funds organized outside the United States from the definition of banking entity.

Compliance

- Agency Coordination. Consider procedural changes to improve the administration of the implementing regulations.
- [Full text of comment letter](#)

Japanese Bankers Association

Proprietary Trading

- Trading Account Definition.
 - Clarify the market capital rule test and the status test.
 - Eliminate the purpose test.
 - Revise the market risk capital rule test to regulate proprietary trading activities that take excessive risk, as it covers the trading accounts defined under the Basel framework.
- Rebuttable Presumption.
 - Provide specific guidance that could allow simplified rebuttal procedures on transactions in which financial instruments are held for fewer than 60 days or the risk of the financial instruments is transferred within 60 days of the purchase (or sale).
 - Introduce presumption that in principle, a purchase or sale is not deemed as a trading account on transactions in which financial instruments are held for more than 60 days or the risk of the financial instrument are transferred after 60 days of the purchase (or sale).
- Exclusions. Exclude the following:
 - Transactions for funding purposes (e.g., forex futures, forex swaps and cross currency swaps);
 - Transactions in the banking book conducted for portfolio management purposes;

- Transactions for funding purposes (e.g., forex futures, forex swaps and cross currency swaps); and
- Transactions in the banking book conducted for portfolio management purposes.

■ Permitted Activities.

- Clarify and ease requirements for permitted activities to facilitate their use.
- Clarify provisions on the involvement of a personnel located in the United States in relation to the TOTUS exemption under the proprietary trading restriction/prohibition.
- Ease the compliance program requirement applied to those market making desks below a certain size (e.g., exemption from metrics reporting).
- Allow banks to select management indicators (e.g., the near term demands of clients, etc., market maker inventory, exposures and holding period) depending on respective activities, instead of being required to apply all of such indicators uniformly to all activities.
- Permit highly liquid sovereign debt issued in the United States and countries other than the country where a trading desk is locate.
- Permit derivative transactions (e.g., futures and options) associated with sovereign debt.
- Clarify the definition of a U.S. entity and the method to identify a U.S. entity as TOTUS desks are subject to limitations on transactions with a U.S. entity.
- Permit transactions with U.S. affiliates or branches within the group.

Covered Funds

■ Definition of Covered Fund.

- Exclude contractual-type and company-type collective investment vehicles from the definition of covered fund.
- Entities whose purpose is to hold or acquire investment securities that exceed 40% of total assets could be deemed as a covered fund, whereas entities whose primary purpose is not to hold or acquire investment securities should be excluded.
- Determine whether a fund is a covered fund also based on the “existence of carried interest” and the “existence of the right to receive other type of performance fees.”
- Simplify the exemption under Rule 3a-7, etc.
- Treat a fund as non-covered if that fund investment is aligned with the objectives of the Volcker Rule (i.e., it is not a high risk trading strategy), for example, it is “held for held-to-maturity purposes under the accounting standard” and is “not leveraged by derivative contracts, etc.”

■ SOTUS Exemption. Revise the SOTUS exemption:

- Eliminate requirement to identify investors who are a U.S. person.
- Alternatively, treat the fund as a non-covered fund.
- Treat foreign privately-placed funds which are held/sponsored by a foreign subsidiary of a U.S. bank as a non-covered fund.

■ Foreign Public Fund. Treat exchange traded funds and real estate investment trusts as non-covered funds, irrespective of the percentage of offerings within the United States.

■ Ownership Interest. Clarify the definition of ownership interest to:

- Exclude interests in the senior tranche of the senior/subordinated structure for securitizations whose underlying assets are not replaced during the contract term.
- Exclude holdings of “the right to participate in the selection or removal of a general partner, investment manager” for securitizations whose underlying assets are not replaced during the contract term.
- Exclude “has the right to receive the underlying assets of a covered fund after all other interests have been redeemed and/or paid in full” and an interest that “has the right to receive all or a portion of excess spread” and replace with the sponsorship category.

- **Super 23A.** In the case of an entity in which a foreign bank and a U.S. bank has a joint investment, if the foreign bank acting as a major investor is a Japanese bank, the entity should not be treated as a covered fund which is subject to Super 23A even if the investment ratio of the U.S. banking entity exceeds 25%.
- **Permitted Activities.** Revise the rule to:
 - Treat SOTUS funds as non-covered funds.
- **Seeding.** Revise certain asset management activities to:
 - Exclude seed capital investments as an activity.
 - Allow the investment period to exceed three years if seed capital investments will not be exempted/excluded.
 - Allow the investment period to exceed three years for fund investments carried out to measure track records for purposes of sales to institutional investors if seed capital investments will not be exempted/excluded.

Scope

- **Extraterritoriality.** Limit the scope of the banking entity definition to those entities organized or domiciled in the United States in the cases where the entities are in a form of corporation.
 - Alternatively, amend the definition of the banking entity to include only those non-U.S. entities meeting clearly specified criteria.
 - Defer to Japanese laws, frameworks for managing subsidiaries and affiliates agreed with Japanese supervisory authorities, and the international consensus of established managerial standards.
- **Foreign Excluded Funds.** Clarify the implementing regulations to ensure that foreign excluded funds are not deemed to be banking entities by virtue of the non-U.S. banking entities' investment in or governance arrangements with the fund.

Compliance

- **Agency Coordination.** Clarify the segregation of roles among the U.S. agencies to ensure an efficient operation reflecting the laws and regulations and custom of each jurisdiction and perspectives that are based on risks within the United States.
- **Metrics.** Limit the metrics reporting to market risk within the United States to be consistent with applicable national laws and regulations. Alternatively, exclude entities with minimal risk from the metrics reporting.
- **Attestation.** Modify the implementing regulations to clarify that the attesters should be the appropriate senior management officer in the United States in order to meet the determination process for the coverage of the rule.
- **Extraterritoriality.** Allow for a decision-making approach that takes into account the applicable laws and regulations of the country of a non-U.S. entity if the implementing regulations are applied continuously to the non-U.S. entities.
- [Full text of comment letter](#)

Loan Syndications and Trading Association

Covered Funds

- **Definition of Covered Fund.** Modify definition of covered fund to exclude all securitization vehicles by modifying the current definition of loan securitization.
- **Ownership Interest Definition.** Revise definition to clarify that ownership interest does not include a CLO note holder's contingent right to remove an investment manager for cause.
- [Full text of comment letter](#)

Mid-Size Bank Coalition of America

Proprietary Trading

- Trading Account Definition.
 - Remove the purpose test, with Volcker Rule positions simply being “financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions).”
 - Remove the status test.
- Rebuttable Presumption.
 - Remove the 60-day rebuttable presumption.
 - Until the Volcker Agencies are able to revisit the rebuttable presumption, the OCC should refrain from considering certain transactions where no speculative trading is present (e.g., error corrections, acquisition of an investment portfolio as a result of acquiring an unaffiliated bank and subsequent sale of the portfolio, acquisition and sale of short-term money market assets as part of a cash management strategy, matched book derivatives trades, interest rate swaps with customers and mirror transactions to lay off risk, hedging of issuance of long-term debt, loan sales) in its examinations.
- Permitted Activities.
 - Reconsider the scope of the trading on behalf of customers exemption and include customer-facilitating transactions.
 - Not require ongoing calibration under the risk-mitigating hedging exemption and eliminate requirement to maintain documentation of the specific assets and risks being hedged.

Covered Funds

- Venture Capital Funds. Create an exclusion for qualifying venture capital funds (or funds of such funds) that are 3(c)(1)/3(c)(7) funds and meet certain characteristics of venture capital funds.

Scope

- De Minimis Exemption. Add a *de minimis* exemption to the proprietary trading prohibition:
 - Exempt a banking entity as long as the amount of its market risk trading assets/liabilities is less than the greater of:
 - \$1 billion, or
 - 5% of total consolidated assets.
 - Trading assets and liabilities are to be considered separately and not combined for purposes of the exemption and do not include U.S. government and agency securities, loans, physical commodities or spot FX.

Compliance

- Compliance Program. If a banking entity’s amount of market risk trading assets and liabilities in Volcker Rule covered instruments is less than the greater of \$1 billion or 5% of total consolidated assets, it should be able to satisfy the compliance program requirement by including the appropriate references to the Volcker Rule in its policies and procedures.
- [Full text of comment letter](#)

Mortgage Bankers Association (MBA)

- ❖ Shift the design of the Volcker Rule in the direction of a principles-based regulation, for example, by providing banks additional flexibility and discretion, and substituting supervisory oversight and iterative processes for prescriptive restrictions and negative presumptions.

Proprietary Trading

- RENTD. Provide more flexibility around the application of the RENTD standard.
- Permitted Activities. Ensure that any revisions to the Volcker Rule do not carry consequences that inhibit the use of hedges by the mortgage industry. They should not capture to be announced contracts or other mortgage pipeline or mortgage servicing rights hedges in their determination of instruments that constitute proprietary trading.

Covered Funds

- Definition of Covered Fund. Narrow the scope of entities falling under the definition of covered fund.
- [Full text of comment letter](#)

National Venture Capital Association

Covered Funds

- Venture Capital Funds. Create an exclusion from the definition of covered fund for venture capital funds.
- [Full text of comment letter](#)

Property Casualty Insurers Association of America

Proprietary Trading

- Rebuttable Presumption. Replace rebuttable presumption with reverse presumption.

Covered Funds

- Definition of Covered Fund. Revise the covered fund definition to reference specific fund characteristics, in particular short-term trading, rather than indiscriminately restricting investments in private equity and hedge funds.

Scope

- Exclusions.
 - Exclude all depository institution holding companies with less than \$10 billion in consolidated assets from the Volcker Rule.
 - Exclude depository institution holding companies whose proprietary trading activities comprise less than 10% of their trading portfolio from the Volcker Rule.

Compliance

- Reporting Requirements. Implement technology-based systems to track holding periods and issue trigger warnings when thresholds are at risk of being violated.
- [Full text of comment letter](#)

Risk Management Association – Committee on Securities Lending

Covered Funds

- **Asset Management Exemption.** Clarify that:
 - Funds sharing the type of structure and relationships inherent in the cash collateral pools meet the requirements of Section 11 of the implementing regulations, and
 - Services in the nature of the customary services provided by agent banks to their cash collateral pools described above would be deemed prime brokerage transactions pursuant to Section 10(d)(7) and otherwise meet the requirements of Section 14(a)(2)(ii).
- **Cash Collateral Exemption.** Add a new exemption under the implementing regulations for cash collateral pools pursuant to their authority under Section 13(d)(1)(J), and provide that such activities are exempt from each of Section 3(a), Section 10(a) and Section 14(a) of the implementing regulations.
- [Full text of comment letter](#)

Securities Industry and Financial Markets Association (SIFMA)

Proprietary Trading

- **Trading Account Definition.** Define proprietary trading as speculative short-term standalone proprietary trading through definition of the term “trading account” in the implementing regulations. Revise the trading account definition to capture trading in any financial instrument by a segregated or operationally distinct business unit that is mandated to generate profits from short-term price movements or short-term trading strategies, which is unrelated to the banking entity’s financial intermediation, risk management, asset-liability management or banking book investment activity.
- **Rebuttable Presumption.** Eliminate the 60-day rebuttable presumption, in accordance with the U.S. Treasury Department’s report on regulatory reform in the banking sector.
- **Permitted Activities.** Present the permitted activities as examples of what is not proprietary trading, and streamline them. The implementing regulations should focus solely on the core components of the permitted activities to provide a guidepost to banking entities in determining whether or not their activities are proprietary trading.
- **RENTD.** RENTD, in the context of market making and underwriting, should be interpreted as financial intermediation conducted in accordance with each banking entity’s prudential risk tolerance framework. In the alternative, a framework may be designed such that RENTD is only one of several factors, including the firm’s risk-tolerance statement and other prudential risk management processes, that inform the risk management function of the banking entity.

Covered Funds

- **Definition of Covered Fund.** Revise the definition of covered fund so that it is limited to an entity that would be an investment company, as defined in the 1940 Act, but for Section 3(c)(1) or 3(c)(7) of that Act, that is principally engaged in short-term proprietary trading of financial instruments, defined as trading conducted by the entity for the primary purpose of generating profits from short-term price movements.
- **Ownership Interest Definition.** Revise the definition of “other similar interest” to be limited to interests whose economic risks are substantially identical to equity. Provide a safe harbor from the definition of ownership interest for ordinary debt securities, which are those with a stated principal amount, maturity date and interest payments.
- **Name-Sharing Prohibition.** Limit the overly restrictive name-sharing prohibition for sponsored covered funds to focus on names related to core brands, i.e., the top tier bank holding company and any insured depository institutions within the banking organization.
- **Super 23A.**
 - **Covered Transaction Definition.** Revise the current definition of covered transaction to be consistent with its usage in Section 23A of the Federal Reserve Act, so that it excludes the same transactions that are

excluded from the general definition of covered transaction for purposes of the core limitations and requirements of Section 23 of the Federal Reserve Act and Regulation W.

- Prime Brokerage Exemption. Clarify the regulatory definition of the term prime brokerage transaction to include common types of brokerage and prime brokerage transactions and services, including:
 - Lending and borrowing of financial assets;
 - Provision of secured financing collateralized with financial assets;
 - Repurchase and reverse repurchase of financial assets;
 - Derivatives; and
 - Clearing and settlement activity.
- Clear Exclusions from the Definition of Covered Fund Needed.
 - Foreign Public Funds. Replace the foreign public fund exclusion with the following: “An issuer that:
 - Is organized or established outside of the United States; and
 - Is qualified to be offered to non-U.S. retail investors.”
 - Debt Securitizations. Modify the loan securitization exclusion to permit limited holdings of debt securities or synthetic instruments in addition to loans (e.g., 20% of its assets).
 - Family Wealth Vehicles. Revise the definition of covered fund to exclude family wealth management vehicles and other similar entities.
 - Single Investor, Client-Requested and Client-Facing Transaction Structures. Revise the definition of covered fund to exclude special purpose vehicles solely used to structure transactions for a single client (or a single group of affiliated clients), and created by or at the request of a client (or group of affiliated clients).
 - TOBs and Similar Financing Structures. Revise the definition of covered fund to exclude tender option bond structures and other similar financing vehicles whose only financial instrument holdings are domestic government obligations.
- Eliminate Extra Limitations and Requirements For Covered Funds.
 - Market Making and Underwriting. Eliminate the requirements that covered fund ownership interests held in a permissible market making or underwriting capacity count toward the 3% per-fund and aggregate ownership limitations and are subject to capital deductions.
 - Risk-Mitigating Hedging. Permit a banking entity to engage in risk-mitigating hedging in covered fund ownership interests under the same conditions as for other instruments under the proprietary trading risk-mitigating hedging permitted activity. As such, no 3% per-fund or aggregate ownership limitations or capital deductions should apply to covered fund interests held as risk-mitigating hedges.

Scope

- Excluded Private Funds. Exclude foreign excluded funds and other private funds that are not covered funds from the definition of banking entity. The relief provided by the guidance should be made permanent and extended to all private funds that are not covered funds, except that the condition that a qualifying fund be offered in connection with an asset management business should be eliminated.
- Non-Consolidated Companies. Exclude non-consolidated companies whose activities are not managed or operated by a banking entity from the definition of banking entity.

Compliance

- Compliance Program. Simplify the prescriptive compliance obligations of the proprietary trading and covered fund provisions and section 20 and remove the duplicative Appendix B of the implementing regulations.
- Trading Desk Design. Replace the concept of “trading desk” with the less granular “business unit.”
- Agency Coordination. Require the Volcker Agencies to more formally coordinate interpretation and examination of the Volcker Rule, with one agency taking the lead.

- Metrics. Eliminate the quantitative metrics regime of Appendix A of the implementing regulations.
- [Full text of comment letter](#)

Small Business Investor Alliance (SBIA)

Covered Funds

- Expanded SBIC Exclusion. Allow banking entities to retain their investments in small business investment companies (“**SBIC**”) that surrender their licenses during a wind-down phase.
- SBIC Fund of Funds. Allow banking entities to invest in a fund-of-funds that limits its investments to SBICs and other permissible activities.
- [Full text of comment letter](#)

Structured Finance Industry Group

Covered Funds

- Definition of Covered Fund. Redefine covered funds to include only entities that:
 - Rely solely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940; and
 - Are in the business of engaging in short-term speculative trading activity defined as trading conducted for the primary purpose of generating profits from short-term price movements or short-term trading strategies.
- Ownership Interest Definition. Redefine ownership interest in the following ways:
 - Remove the category of “or other similar interest.”
 - Include a safe harbor exclusion for any loan, repurchase facility, derivative exposure, debt security or other form of bank financing that has the following characteristics:
 - Pursuant to the terms of the applicable debt documents, the holders of the debt have payment entitlements consisting solely of (i) the right to receive interest at a stated interest rate (either fixed or based on a customary index or interbank rate) and (ii) the right to receive a fixed principal payment on a stated final maturity.
 - The entitlements to principal and interest under the applicable debt documents are absolute and are not reduced to reflect write-downs or charge-offs of the underlying assets of the fund in accordance with the terms of the applicable debt documents.
 - Except for the right to foreclose on the collateral upon an event of default, the holders of the debt would have no rights to receive the underlying assets.
- Loan Securitization Exclusion.
 - Remove the condition under the loan securitization exclusion requiring an issuer to issue an asset-backed security.
 - Modify the definition of “loan and servicing or incidental assets” so it is clear that leases and related lease assets may be included as assets owned by and supporting the debt securities issued by an entity relying on the loan securitization exclusion.
 - Permit limited holdings (i.e., up to 20%) of non-complying assets.
- ABCP Conduit Exclusion.
 - Permit an asset-backed commercial paper issuer to hold, directly or indirectly, any assets that may be held by an issuer relying on the loan securitization exclusion.
 - Remove entirely the conditions to the qualifying asset backed commercial paper conduit exclusion that do not appear to have any grounding in the purpose of the Volcker Rule.
- [Full text of comment letter](#)

The Clearing House Association (TCH)

Proprietary Trading

- **Trading Account Definition.** Revise the over-inclusive definition of “trading account” in the implementing regulation, consistent with Congressional intent, to focus on short-term standalone proprietary trading and to reflect that banking entities’ asset-liability management and risk management activities in connection with core commercial banking-related activities should not be viewed as proprietary trading.
- **Rebuttable Presumption.**
 - Eliminate the 60-day rebuttable presumption that positions held for fewer than 60 days meet the purpose test and are therefore for the trading account of the banking entity, as recommended by the U.S. Treasury Department’s report on regulatory reform in the banking sector.
 - Apply safe harbors from trading account statuses to positions that are held for longer than 60 days, as well as positions that are recognized as non-trading positions under established classification regimes and treated as such for other regulatory purposes, including:
 - Securities positions classified as available-for-sale or held-to-maturity under U.S. GAAP;
 - Derivative positions that are designed as accounting hedges under Standard ASC 815, Derivatives and Hedging, of the Financial Accounting Standards Board; and
 - Securities and derivative positions that are in the banking book for regulatory capital purposes.
- **Asset-Liability Management.** Streamline the implementing regulation’s overly narrow and prescriptive liquidity management exclusion to ensure that banking entities can, as a practical matter, rely upon the exclusion to conduct bona fide asset-liability management activities.
- **Exclusions.** Exclude from the proprietary trading prohibition any transactions that are entered into as part of the firm’s obligation to meet a regulatory, self-regulatory or exchange requirement applicable to the banking entity.
- **Permitted Activities.**
 - Revise the exemption for trading in foreign government obligations to permit all banking entities to trade in government obligations of G-20 countries.
 - Expand the exemptions for trading in domestic government obligations and foreign government obligations to permit trading in derivatives that reference such obligations.
 - Provide guidance to make clear that banking entities may rely upon the market making exemption to engage in customer-driven derivatives activities (including the related one-to-one or portfolio hedging of such derivatives). These activities should be presumed to satisfy the RENTD requirement. Alternatively, provide guidance clarifying that the exemption for trading “on behalf of customers” extends to this type of derivatives activity (and to the related hedging).
 - Streamline risk-mitigating hedging exemption requirements.
 - Exempt from the proprietary trading prohibition any purchases or sales of a security pursuant or related to a contractual obligation to purchase a financial instrument to provide liquidity to a client, customer or counterparty that is related to the market value of securities held by the tender option bond trusts.

Covered Funds

- **Definition of Covered Fund.** Revise the definition of covered fund to cover only those entities that meet both of the following criteria:
 - The entity would be an investment company, as defined in the Investment Company Act of 1940, but for Section 3(c)(1) or 3(c)(7) of that Act; and
 - The entity is principally engaged in short-term proprietary trading of financial instruments, defined as trading conducted by the entity for the primary purpose of generating profits from short-term price movements.
- **Covered Fund Exclusions.** Revise the implementing regulations to:
 - Exclude from the definition of covered fund family wealth management vehicles.

- Exclude from the definition of covered fund client-requested vehicles created by or at the request of an unaffiliated client to structure a transaction for that client and/or its affiliates.
- Rescind FAQ #15, which significantly limited the practical utility of the joint venture exclusion, and restore the exclusion in a manner that will allow banking entities to share the risk and cost of financing their banking activities through joint ventures.
- Permit loan securitization vehicles to hold a limited bucket (e.g., 20% of total assets) of non-loan assets, such as securities and derivatives.
- Eliminate the requirement that covered bond asset pools contain only loans and/or simplify the definition of ownership interest.
- Clarify that the implementing regulations' loan securitization exclusion extends to re-REMICs.
- Exclude from the definition of covered fund titling trusts.
- Revise the conditions of the foreign public fund exclusion to:
 - Provide comparable treatment for U.S. and non-U.S. public investment companies, including any fund that is exchange traded or that has publicly offered shares, or that are otherwise qualified to be offered to retail investors, and
 - Remove the 15% ownership limitations on U.S. banking entities' and employees' investments in any such public fund.
- Exclude from the definition of covered fund vehicles used to finance activities for banks and bank holding companies.
- Clarify that the SBIC exclusion is available to SBICs that surrender their licenses later in life (or revise the exclusion to provide certainty in this regard).
- Exclude from the definition of covered fund real estate investment trusts and passive pass-through trusts that are established at the request of customers and hold interests in real estate investment trusts.
- Exclude from the definition of covered fund funds that promote economic growth, capital formation and job creation.
- **Ownership Interest Definition.** Limit the definition of ownership interest in the implementing regulations to be consistent with the statute—that is, by focusing on equity interests and limited partnership interests and capturing “other” forms of ownership interests only to the extent that they are functionally similar to equity interests and limited partnership interests. This would include, for example, limited liability company interests, but would not capture interests such as debt instruments with voting or other rights and hybrid debt instruments that may be captured by the implementing regulations' current overbroad definition of ownership interest.
- **Super 23A.** Revise Super 23A so as to incorporate the exemptions in Section 23A of the Federal Reserve Act and the Federal Reserve's Regulation W, such as the exemptions for transactions that are fully secured by U.S. government securities or cash collateral and for intraday extensions of credit that facilitate settlement.

Scope

- **Uncontrolled Entities.** Narrow the definition of banking entity such that it does not include entities that a banking entity has limited or no practical ability to direct or control and, thus, allow banking entities to continue to make investments and establish relationships that are important from a strategic or risk management perspective (e.g., joint ventures or minority investments that are not required to be consolidated on a banking entity's financial statements under GAAP).
- **Excluded Funds.** Exclude certain funds, such as public welfare investment entities that are not covered funds from the definition of banking entity.
- **Customer-Related Vehicles.** Exclude vehicles established for customer-related activities from the definition of banking entity.

Compliance

- Compliance Program.
 - Permit banking entities to develop appropriately tailored compliance programs.
 - In place of the prescriptive requirements of Subpart D and Appendix A and B of the implementation regulations (including the metrics and the attestation requirements) as well as the specific compliance requirements of the applicable exemption(s), a banking entity's obligation should be (consistent with principles of sound risk governance and compliance management) to:
 - Establish and maintain policies, procedures, records and systems to conduct, monitor and manage its activities and investments in a manner reasonably designed to ensure compliance with the Volcker Rule, appropriate to the size, scope and risk profile of the banking entity's trading and covered fund activities or investments; and
 - Make the foregoing policies, procedures and records available to the applicable Volcker Agencies upon request.
 - Eliminate the specialized compliance program requirements under the implementing regulations and shift to reliance on traditional bank compliance and internal audit functions, subject to review by examination staff.
- Metrics. Eliminate or significantly modify the mandatory reporting of metrics. If not eliminated, align metrics reporting with traditional regulatory reporting practices, including by limiting such reporting to the metrics that most directly relate to safety and soundness and reducing reporting frequency (e.g., quarterly, with the reporting due 30 days after the prior quarter-end).
- Agency Coordination.
 - Take steps toward enhancing regulatory coordination with respect to rulemaking, interpretation, examination and enforcement of the Volcker Rule in order to avoid uncertainties and inefficiencies. The chairperson of the FSOC should utilize his or her statutory authority to require increased regulatory coordination by directing the Agencies to enter into interagency agreements that include:
 - The designation of the Federal Reserve as the lead agency for developing rules and interpretive guidance; and
 - The designation of the prudential regulator for each banking organization's dominant legal entity as the agency responsible for examination and enforcement of the Volcker Rule with respect to that organization on a firm-wide basis.
 - Defer taking formal or informal enforcement action against a banking entity with respect to any inadvertent violations (or potential violations) of the Volcker Rule identified by the banking entity or its regulators while the Volcker Agencies are considering revisions to the implementing regulations and instead rely upon other supervising approaches to preclude evasion of the Volcker Rule.
- [Full text of comment letter](#)

U.S. Chamber of Commerce – Center for Capital Markets Competitiveness

- Economic Analysis. Conduct a rigorous economic analysis of the Volcker Rule, which should consider direct impacts on financial institutions and indirect impacts on market liquidity, access to capital, U.S. businesses, and economic growth.
- Cumulative Impact Assessment. Conduct a cumulative impact assessment of major regulatory initiatives undertaken since the financial crisis, which should include, but not be limited to: the Volcker Rule, risk retention rules, money market fund regulations, Liquidity Coverage Ratio Rule, Net Stable Funding Ratio, Total Loss Absorbing Capacity Rule, the Foreign Bank Operations Rule, and rules promulgated under Section 165 of the Dodd-Frank Act.

- Report to Congress. Report to Congress if the Volcker Rule should be repealed outright or amended and if so how.
- Administrative Law Compliance. Congress and the Administration should take steps to ensure that the federal banking agencies conduct an economic analysis with all rulemakings, as required under the Riegle Act and the Administrative Procedures Act.
- Reduced Market Liquidity. The Volcker Rule has reduced market liquidity and hurt main street businesses.
- [Full text of comment letter](#)

U.S. Banking Organizations

BBVA Compass Bancshares, BMO Financial Corp., Capital One, CIT Bank, N.A., Citizens Financial Group, Inc., Discover Financial, et al.

- ❖ Intended to supplement the comprehensive comments submitted by TCH, SIFMA, the ABA, and the Structured Finance Industry Group.

Proprietary Trading

- **Trading Account Definition.** Establish clear, objective criteria for whether trades fall inside or outside of the trading account under the purpose test.
- **Exclusions.**
 - Each of the following types of positions should be explicitly excluded from the scope of the trading account and thus from the scope of the Volcker Rule's proprietary trading provisions:
 - Securities positions that are carried as either available-for-sale at fair value or held-to-maturity at amortized cost in conformance with U.S. generally accepted accounting principles;
 - Derivative positions that are designated as accounting hedges under Standard ASC 815, Derivatives and Hedging, of the Financial Accounting Standards Board;
 - Positions that receive banking book and not market risk rule capital treatment; and
 - Any positions held for longer than 60 days.
 - Exclude from the scope of the prohibition on proprietary trading any transactions in financial instruments a banking entity executes on behalf of its asset management customers, including transactions as an agent, broker, custodian, discretionary or nondiscretionary trustee, fiduciary, investment adviser, investment manager, or riskless principal. These activities should be excluded regardless of whether a banking entity exercises voting power or investment discretion on behalf of the customer.
 - Exclude any transactions in financial instruments a banking entity executes for the purpose of developing and delivering products and services to its asset management customers, subject to appropriate internal controls developed by the banking entity and subject to supervision and examination.
- **Rebuttable Presumption.** Do not interpret the substantial transfer of risk language to pull longer-term interest rate risk management positions into the scope of the implementing regulations.
- **Permitted Activities.**
 - Streamline and simplify the requirements for engaging in permitted trading activities, particularly with respect to permissible derivative transactions on behalf of lending customers, risk-mitigating hedging activities, and related hedges and securities transactions on behalf of asset management customers.
 - Adopt a separate market making exemption tailored to banking entities' otherwise permissible customer-driven, cash-settled derivative activities and the related hedges, or issue public guidance making clear that such activities are permitted under the current rule, addressing existing uncertainties, including those noted above.
 - Authorize banking entities that are not making a market in derivatives but offer derivative products only upon request or occasionally to a customer and the related hedges under the exemption for trading on behalf of a customer.

Covered Funds

- **Definition of Covered Fund.** Simplify the definition of covered fund by maintaining the reference to Sections 3(c)(1) or 3(c)(7) as guardrails on what constitutes a covered fund.
- **Definition of Covered Fund.** In addition to considering the status of a covered fund under the Investment Company Act of 1940, the Volcker Agencies also should consider the fund's characteristics and activities to avoid unintended consequences.

- One option for achieving this would be to define covered fund as “an issuer engaged in trading for a short-term trading purpose that would be an investment company as defined in the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7).”
- **Covered Fund Exclusions.** Retain and review the current list of excluded entities and consider streamlining and simplifying the exclusions, particularly for loan securitizations. Consider excluding the following:
 - Vehicles backed primarily by loans or leases (e.g., mortgage and other real estate loans, commercial loans, auto loans, leases, and accounts receivable securitizations);
 - Vehicles backed primarily by government obligations (e.g., re-REMICs);
 - Pooled asset management accounts;
 - Family trusts established for clients for wealth preservation purposes;
 - Titling trusts, such as those used in equipment finance deals;
 - Real estate investment trusts, including pass-through real estate investment trusts; and
 - SBICs that have given up their SBIC license late in life and/or while liquidating their holdings.
- **Ownership Interest Definition.** Limit the definition of ownership interest only to equity and partnership positions consistent with the statute, with clarification that loans and senior tranches of debt instruments are not ownership interests.

Scope

- **Banking Entity Definition.** Define banking entity by including as an affiliate only a company in which a banking entity owns, controls, or has the power to vote 25% or more of any class of voting securities or controls in any manner the election of a majority of the directors or trustees of the company.
- **Registered Investment Companies.** Exclude all RICs from the definition of banking entity.

Compliance

- **Compliance Program.**
 - Do not apply the enhanced compliance program requirements to those banking entities whose average aggregate trading assets and liabilities are less than \$20 billion or apply the enhanced compliance program requirements based on a ratio of U.S. trading assets and liabilities to total U.S. assets and liabilities, respectively.
 - Do not require to adopt specific compliance programs under the implementing regulations for any subsidiaries or affiliates that do not engage in any trading or fund activities.
- [Full text of comment letter](#)

Beneficial State Bank

Scope

- **Community Banks.** Do not exempt community banks.
- [Full text of comment letter](#)

BMO Financial Group

Proprietary Trading

- **Rebuttable Presumption.** Eliminate the subjective and overly complex 60-day rebuttable presumption.
- **RENTD.** Revise the RENTD provisions of the implementing regulations, as applicable to both permitted underwriting and market making, to provide banking entities with more flexibility.

- Definition of Financial Instrument. Exclude both domestic government obligations and foreign government obligations from the definition of financial instrument.

Covered Funds

- Definition of Covered Fund. Replace the current definition of covered fund with a characteristics-based definition that includes only funds that are primarily engaged in proprietary trading. Possible solution would be to revise clause (i) of the current definition to read as follows.
 - An issuer that:
 - Would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for Section 3(c)(1) or 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7)); and
 - Either holds itself out as a hedge fund or private equity fund or otherwise discloses to investors in writing, or otherwise markets to potential investors, that the fund primarily engages in proprietary trading for short-term investment gains.

Scope

- Extraterritoriality. Revise the definition of banking entity to include only:
 - The operations of U.S. domiciled bank holding companies and their subsidiaries, and
 - The operations of intermediate holding companies of the foreign banking organizations and their subsidiaries
- Foreign Excluded Funds. If the above definition is not revised, adopt a permanent version of the guidance regarding foreign private funds that was adopted by the Volcker Agencies in their July 21, 2017 statement of policy.

Compliance

- Attestation. Eliminate the CEO attestation requirement, which is estimated to take over 1,000 hours of work annually.
- Agency Coordination. Establish a single agency to take the lead for all rulemaking, interpretation and guidance regarding the implementing regulations, while providing for each Volcker Agency to maintain their existing enforcement and supervisory rules.
- [Full text of comment letter](#)

BOK Financial

Proprietary Trading

- Rebuttable Presumption.
 - Adopt reverse presumption for hedging of non-trading assets and liabilities, such as mortgage servicing assets (i.e., transactions that reduce price risk).
 - Remove the rebuttable presumption.
 - In the alternative, set uniform standards and review rebut requests in timely, fair and reasonable manner.
 - Introduce a reverse presumption that presumes the activities are not proprietary trading for matched book trades and transactions in financial instruments that hedge non-trading assets or liabilities.
- Trading Account Definition. Consider removing the purpose test.
- Permitted Activities. Alternatives to identify proprietary trading, that would be subject to the implementing regulations and require an exemption to conduct:
 - Net Positions. Calculate long market value less short market value to measure net position.
 - At the security level, a non-zero value net position indicates a proprietary position.

- At the derivative underlying level a net position whose value changes with the underlying price indicates a proprietary position.
- Net Risk Equivalent Positions. Calculate the risk equivalent position for fixed income securities by converting each position to a well-known benchmark such as a 10 year Treasury duration equivalent. Any security or underlying derivative that has a net zero position should also have a net zero risk equivalent position. If that is not the case, then the risk equivalent model is wrong or there is proprietary trading occurring and the securities are identified incorrectly.
- Stress Test Exposure. Calculate portfolio sensitivity by shifting the market parameter(s) that influence the value of a security or derivative position. A non-zero stress test measure suggests proprietary trading.

Covered Funds

- Definition of Covered Fund. Replace the covered fund definition, since there is confusion regarding certain securities that trade and price like securitized fixed income products, but are considered covered funds.

Scope

- De Minimis Exclusion. Exclude from the scope of the Volcker Rule financial entities with low absolute levels of trading exposure if such entities' trading exposure is small relative to their capital and if their trading revenue is small relative to total revenue.
- No Price Risk Exclusion. Exclude from the scope of the Volcker Rule financial entities who use financial instruments solely in activities that bear no price risk or that reduce price risk to non-trading assets, irrespective of the quantity of financial instruments used.

Compliance

- Compliance Program. Recognize compliance programs that ensure compliance with without mandating a separate Volcker Rule compliance program.
- [Full text of comment letter](#)

Charles Schwab

- ❖ Intended to support those letters submitted by SIFMA, the ABA and TCH.

Compliance

- Compliance Program.
 - Eliminate the Appendix B enhanced compliance program requirements from the implementing regulations.
 - Appendix B ought to be tailored to the particular activities and potential risks of a banking entity.
 - If the Volcker Agencies are unable to make this change, revise the implementing regulations to exclude from the scope of their enhanced compliance program banking entities that:
 - Are not engaged in trading in financial instruments "principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements)," evidenced by a *de minimis* level of their total revenues being attributable to permitted trading activities; and
 - Do not sponsor, invest in, offer or otherwise enter into relationships with any covered funds.
- Agency Coordination. Examine the Volcker Rule compliance of banking entities as part of their general safety and soundness examination, rather than as one or more separate Volcker Rule examinations.
- [Full text of comment letter](#)

Chatham Financial Corporation, Atlantic Capital Bank, Blue Hills Bank, et al.

Proprietary Trading

- Trading Account Definition. Eliminate the purpose test. Rely on the market risk capital rule and status tests.

Scope

- De Minimis Trading Exemption. Exclude banks with \$10 billion or less in total assets and banks with limited trading assets and liabilities. Apply the proprietary trading provisions only to banking organizations that have more than \$1 billion in trading assets and liabilities or whose trading assets and liabilities represent 10% or more of their total assets.
- [Full text of comment letter](#)

EnerBank USA

Scope

- Industrial Loan Companies. Amend the definition of banking entity under the Volcker Rule to exclude industrial loan company parents that are not predominantly engaged in financial activities from coverage under the Volcker Rule.
- [Full text of comment letter](#)

Huntington National Bank

Proprietary Trading

- Trading Account Definition. Eliminate the purpose test.
- Rebuttable Presumption.
 - Abolish the rebuttable presumption.
 - Establish a reverse presumption to provide a safe harbor for any purchase or sale of a financial instrument outside of a 60-day window.
 - Provide further guidance on the specific factors that the OCC will consider in determining whether a banking entity has successfully rebutted the presumption, both for individual trades and for groups of related transactions.
- Permitted Activities.
 - Exempt normal corporate activities related to internal reorganizations, stock issuances, buyback programs, and stock retirement.
 - Provide that a financial instrument obtained by a banking entity in connection with a merger, or as a result of an acquisition of another entity, should not be deemed to have been purchased or acquired by that entity for purposes of the Volcker Rule.

Covered Funds

- Definition of Covered Fund.
 - Replace the current definition of a covered fund with a definition that references characteristics of a traditional hedge fund or private equity fund.
 - Exclude venture capital funds or related funds that are formed for the purpose of making investments in emerging growth or early-stage companies associated with local communities from the covered fund definition.

- **Ownership Interest.** Revise the definition of “ownership interest” substantially to apply only to equity or equity-like interests.
- **Covered Fund Exclusions.** Exclude from the covered fund definition: family office investment vehicles; family trusts; family limited partnerships; personal investment vehicles; endowments; vehicles formed for tax, estate planning, and/or other family and personal wealth management; trusts established for testamentary purposes; funeral and cemetery trust funds; and vehicles established for charitable giving.
- **Super 23A.** Include within covered transactions under Super 23A the list of prohibited transactions contained in Section 23A(a)(7) of the Federal Reserve Act, as qualified by the list of excluded transactions set forth in Section 23A(d).

Scope

- **De Minimis Trading Activities.** Exclude banking entities that engage primarily in traditional banking activities and do not engage in significant trading activities from the Volcker Rule’s proprietary trading restrictions, regardless of asset size.
 - Exclude banking entities that are not subject to the Market Risk Capital Rule from the proprietary trading prohibitions of the Volcker Rule.
 - Exclude banking entities that have \$10 billion or less in trading asset and liabilities from the Volcker Rule’s proprietary trading restrictions.

Compliance

- **Compliance Program.**
 - Require only banking entities with \$10 billion or more in trading assets and liabilities to establish an enhanced compliance program, including the annual CEO attestation requirement.
 - Revise compliance to rely on traditional bank compliance programs and internal audit procedures. Incorporate and integrate Volcker Rule committees and annual effectiveness reviews and reports into the bank’s general risk management process.
- [Full text of comment letter](#)

Norway Savings Bank

Scope

- **Community Banks.** Exempt community banks with less than \$10 billion in assets.
- [Full text of comment letter](#)

State Street Corporation

Proprietary Trading

- **Trading Account Definition.** Narrow the trading account definition to focus on the core purpose of prohibiting short-term standalone proprietary trading.
- **Market-Making Exemption.** Leverage existing industry practices and reporting requirements related to managing foreign exchange market-making inventory, such as daily VaR by product and position limits compared to relative levels of client activity.
- **Asset-Liability Management.** Exclude foreign exchange swaps for funding purposes related to asset-liability management from the definition of trading account by extending the exclusion provided for foreign exchange spot transactions to similar forwards and swaps used for funding purposes.

- **Rebuttable Presumption.** Eliminate the rebuttable presumption and provide an express safe harbor for any positions held for more than 60 days. Create an express safe harbor for long-term investing activities that encompass available-for-sale and held-to-maturity positions.

Covered Funds

- **Exclusion for Mutual Fund-Like Funds.** Exclude from the definition of covered fund funds with investment strategies that would be permitted for U.S. mutual funds under the Investment Company Act.
- **Seeding.** Implement a two-pronged approach to seeding.
 - Automatically grant the permitted 2-year extension for seeding (beyond the initial 1-year) for all bank investments in covered funds.
 - Provide a safe harbor from the definition of proprietary trading for seeding activity undertaken by the fiduciary arm of the banking entity.
- **Super 23A.** Clarify that credit exposures extended in the ordinary course of providing custody services are not prohibited by Super 23A.

Compliance

- **Metrics.** Eliminate mandatory metrics. If mandatory metrics are retained:
 - Eliminate metrics that are unsuitable for foreign exchange trading (e.g., inventory aging / inventory turnover, metrics which are more suitable for CUSIP-based securities).
 - Limit metrics reporting requirements to those that most directly relate to safety and soundness and reduce reporting frequency and timeframes.
- **Attestation.** Rely on existing internal controls and supervisory review standards rather than Volcker-specific attestation standards.
- **Compliance Program.** Replace the current threshold for the enhanced compliance program based on total consolidated assets with a threshold of \$50 billion based on combined trading assets and liabilities.
- [Full text of comment letter](#)

Stifel Financial Corporation

Proprietary Trading

- **Permitted Activities.**
 - Expand permitted trading on behalf of customers to include customer facilitation transactions in support of underwriting.
 - Permit underwriting-related activities that follow the formal underwriting period.
- **Rebuttable Presumption.** Eliminate the 60-day rebuttable presumption.
- [Full text of comment letter](#)

Teachers Insurance and Annuity Association of America (TIAA)

Proprietary Trading

- **Trading Account Definition.** Endorsement of SIFMA's arguments regarding the definition of proprietary trading.
- **Permitted Activities.** Endorsement of SIFMA's recommendation that permitted activities, including underwriting, be understood as simply falling outside the definition of proprietary trading, rather than being construed as complex exemptions from the prohibition on proprietary trading requiring detailed compliance programs.

Covered Funds

- Name-Sharing Prohibition. Eliminate the prohibition on a covered fund sharing its name, or a variation of its name, with a sponsoring banking entity or any of its affiliates.

Scope

- Non-Controlled Entities. Revise the definition of banking entity to exclude any company that is not or would not be consolidated with or routinely managed or operated by a banking entity.
- Excluded Funds. Revise the definition of banking entity to exclude any foreign excluded funds and other funds that are not deemed covered funds under the Volcker Rule.
- [Full text of comment letter](#)

Foreign Banking Organizations

CITIC Group Corporation

Proprietary Trading

- Trading Account Definition. Limit proprietary trading restrictions to customer-facing transactions.
- Inter-Affiliate Transactions. Exempt transactions between desks within the same legal entity (or among an affiliated group of legal entities).
- Permitted Activities.
 - The condition that no U.S. employees are involved in transactions booked abroad should not be a factor in determining whether the TOTUS exemption is available.
 - Repeal TOTUS exemption requirement to transact through an unaffiliated market intermediary to conduct a trade on a U.S. securities exchange with or through a U.S. entity.
- RENTD. Clarify the uncertainties inherent in the RENTD requirement. Give banking entities additional flexibility to adjust their determinations of the RENTD limit and provide clearer guidance on the permissible holding period.

Covered Funds

- Seeding Period. Revise the permissible seeding period and per-fund investment limits:
 - Change the permissible seeding period to three years, extendable to five years;
 - Raise the *de minimis* threshold to 10% of fund size per market expectation and practice; and
 - Create an appeal and review process for bona fide funds where the banking entity is unable to get below 10% investment.
- Ownership Interest. Exclude total return swaps and other similar instruments in the definition of ownership interest.
- Super 23A. Limit the territorial reach of the Super 23A restrictions to allow a foreign banking entity to provide short term or bridge financing for covered funds that it advises, manages or sponsors.

Scope

- Exclusion for Certain Foreign Banks. Exclude the following foreign banks and their affiliates from the Volcker Rule.
 - Foreign banks with less than \$10 billion in consolidated U.S. assets with respect to their global activities.
 - Affiliates of a foreign bank that are mainly engaged in activities outside the United States.
- [Full text of comment letter](#)

Credit Suisse (Covered Funds)

Covered Funds

- Definition of Covered Fund. Revise the current definition of covered fund to apply only to those Investment Company Act of 1940 Section 3(c)(1) and 3(c)(7) funds that engage in speculative proprietary trading as provided in the proprietary trading restrictions of the implementing regulations.
- Super 23A. Revise the implementing regulations to expressly incorporate the exemptions provided in Section 23A of the Federal Reserve Act and the Board's Regulation W to Super 23A.
 - Revise the implementing regulations, consistent with Section 23A and Regulation W, to clarify that Super 23A does not have extraterritorial effect.
 - Permit covered transactions between a covered fund and an affiliated entity where necessary for best execution so long as the transaction is consistent with the fiduciary duties of the advisor of the covered fund and is not prohibited by other law.

- **Employee Investments.** Revise the implementing regulations' restrictions on employee investments in covered funds to:
 - Provide for a broader, principles-based test to determine which employees are permitted to invest in covered funds; and
 - Include an additional exception for widely distributed programs offered to a significant portion of the bank's qualifying employee population so long as such offering includes sensible per person maximum investment limitations and is offered in a manner consistent with third-party offerings and internal bank policies.
- **Employee Securities Companies.**
 - Amend the definition of covered fund to exclude employee securities companies; and
 - Allow employee securities companies to invest in covered funds even if they are affiliates of banking entities.
- **Seeding.** Amend the implementing regulations to presumptively determine that banks have up to three years to provide seed capital for their newly launched covered funds, without the need to make a specific application to the Federal Reserve Board after less than one year of seeding. After the third year of the seeding period, banks would be required to conform to the applicable investment limits under the asset management exemption of the Volcker Rule.
- **Aggregate Limit.** Revise current 3% limit to be based on the tier 1 capital of the global firm rather than just the U.S. tier 1 capital base. Grandfather all existing funds (ideally, all funds launched prior to a new effective date after modifications to the implementing regulations are adopted).

Scope

- **Foreign Excluded Funds.** Adopt the qualifying foreign excluded fund definition provided in the July 21, 2017 interpretive relief. Revise the implementing regulations to adopt the qualifying foreign excluded funds definition provided in the interpretive relief, and expressly provide that such qualifying foreign excluded funds are not banking entities for purposes of the implementing regulations.
 - In adopting the standard articulated in the interpretive relief, clarify that control under any element of the Bank Holding Company Act be sufficient for treatment as a qualifying foreign excluded fund, rather than only control based on ownership or sponsorship.
 - Clarify that, in addition those foreign funds directly offered and organized by the foreign banking entity, third-party foreign funds held by a foreign bank as part of a customer-facing business may also be eligible for treatment as a qualifying foreign excluded funds.

Compliance

- **Metrics.** Do not include risk mitigation for hedging for seed investments in funds in the proprietary trading metrics. Additionally, if the bank is able to effectively partially or wholly immunize a seed investment from market risk, the seed investment which is hedged should not count towards the tier 1 capital ratio test. Rely on existing internal controls and supervisory review standards rather than Volcker-specific attestation standards.
- **Attestation.** Eliminate the need for the annual CEO certification as the certification process is unnecessary, time consuming, and redirects resources away from other risk reducing activities.
- **Agency Coordination.** Enter into a formal written interagency agreement on Volcker Rule interpretation that:
 - Delegates to a single agency the responsibility for interpretation and guidance and
 - Provides that a single regulator will be charged with coordinating the Volcker examination of a banking entity.
- [Full text of comment letter](#)

Credit Suisse (Proprietary Trading)

Proprietary Trading

- **In General.** Change the presumption so that the core activities of a banking entity are not impermissible proprietary trading:
 - Exclude from the definition of proprietary trading client facing activities and related hedging and internal hedging and cash management activities; and
 - Use existing regulatory limits (capital, liquidity and traditional risk metrics) to monitor whether such activity is consistent with the Volcker Rule.
- **Rebuttable Presumption.** Eliminate the 60-day rebuttable presumption in the implementing regulations, or modify it to clarify that it is freely rebuttable.
- **Permitted Activities.**
 - Expand the riskless principal prong of the trading on behalf of customers exemption in the implementing regulations to include activity involving all financial instruments.
 - Improve the market-making exemption by:
 - Applying comprehensive limits and measures developed under multiple regulations (e.g., capital requirements) in lieu of RENTD; and
 - Requiring only the calculation of financial exposure, which is market-maker inventory net of any related hedging.
 - Do not require the measurement of risk-mitigating hedging activity at an individual trade or risk level. Allow banks to monitor at an aggregate or trading desk level, as long as they can evidence that the portfolio of activity is reducing the targeted risk measures on an overall basis.
 - Simplify the TOTUS exemption by exempting all trading activity by foreign bank organizations where the trading position and associated risk resides outside the United States, such that the Volcker Rule does not apply to non-U.S. entities.

Scope

- **Extraterritoriality.**
 - Limit the implementing regulations restrictions on proprietary trading to the activities engaged in by a non-U.S. bank through its branches and affiliates located outside the United States, given that these entities cannot avail themselves of FDIC deposit insurance or the Federal Reserve's discount window.
 - Amend the implementing regulations to apply only to the U.S. affiliates and branches of a non-U.S. banking organization.
 - Narrow the scope of the Volcker Rule to be consistent with the scope of the CEO attestation, and only apply to the U.S. operations of non-U.S. banks, namely its entities organized in the U.S. as well as any U.S. branches.

Compliance

- **Extraterritoriality.**
 - Narrow the extraterritorial reach of the Volcker Rule and its compliance program and metrics reporting regime so that they apply only to the U.S. operations of a non-U.S. banking entity.
 - Rely on existing internal controls and supervisory review standards rather than Volcker Rule-specific attestation standards.
- **Trading Desk Design.** Give banking entities the flexibility to align their Volcker Rule trading desk hierarchy to their existing management structure and design a compliance program that is appropriate to the specific activities and risk profile of their organization.

- **Metrics.** Limit Appendix A and the quantitative Volcker Rule metrics requirements by:
 - Limiting the quantitative metrics filing requirement to the U.S. based trading desks of a non-U.S. banking entity; and
 - Reducing the frequency of reporting such metrics for all banking entities to quarterly.
- **Agency Coordination.** Enter into a formal written interagency agreement on Volcker Rule interpretation that:
 - Delegates to a single agency the responsibility for interpretation and guidance; and
 - Provides that a single regulator will be charged with coordinating the Volcker Rule examination of a banking entity.
- [Full text of comment letter](#)

Mitsubishi UFJ Financial Group, Inc.

Scope

- **Non-Controlled Entities.** Amend the Volcker Rule to limit its extraterritorial application so that an entity is not deemed controlled by a minority shareholder solely by virtue of the minority shareholder's ownership interest in the entity if another shareholder exercises "qualifying control" of the entity. For these purposes, "qualifying control" would exist only when a shareholder:
 - Is itself a banking entity subject to the Volcker Rule;
 - Holds a majority of the entity's voting rights;
 - Consolidates the entity for financial reporting purposes; and
 - Appoints a majority of the entity's directors.
- [Full text of comment letter](#)

Public Interest Groups

Better Markets, Inc.

- ❖ Reject any calls to weaken the implementing regulations.
- OCC's RFI Undermines Volcker Rule. The RFI is designed to facilitate efforts to weaken the Volcker Rule, an outcome that would substantially increase the likelihood of another devastating financial crisis.
 - The RFI is an early step in a process aimed at undermining the Volcker Rule.
 - The Volcker Rule is an indispensable component of the reforms that are preserving and protecting financial market stability and economic prosperity.
 - Any attempt to rewrite the Volcker Rule is premature.
 - Empirical evidence, including the recent SEC report on access to capital and market liquidity, shows that the Volcker Rule is having none of the injurious effects its opponents claim.
- Consistent with Statute. Any revisions to the Volcker Rule must comport with the statute, serve its purposes, and rest on credible and transparent empirical analysis.
 - The Volcker Agencies must remain faithful to the language and purposes of the statute, especially in light of the industry's unprecedented resolve to avoid or evade the Volcker Rule.
 - The Volcker Agencies must provide a legally sufficient explanation for any changes to the Volcker Rule, in accordance with the Administrative Procedure Act, including, if possible, a credible factual basis for changing its regulatory approach.
- Strengthen Volcker Rule. The OCC should reject changes that will weaken the Volcker Rule and should instead strengthen it, both as written and in its implementation.
 - Limit market-making compensation to bid-ask spreads, fees and commissions.
 - Strict congruence between any hedging activity and the risks that are hedged.
 - Strong enforcement that holds individuals accountable and imposes penalties and other sanctions that truly punish and deter violations.
 - Preserve tiered compliance regime, definition of trading account, 60-day rebuttable presumption and attestation requirement.
 - Prohibit permitted activities that create material conflicts of interest (regardless of disclosures or information barriers).
- Vigorous Enforcement. Implement through vigorous enforcement.
- [Full text of comment letter](#)

Jubilee USA

- Do Not Weaken Restrictions. Do not weaken restrictions on speculative investments.
- Improve Transparency. Improve transparency by publicly sharing standards for compliance, enforcement efforts and an assessment of the success or failure of banking institutions to meet compliance standards.
- [Full text of comment letter](#)

Occupy the SEC

- ❖ Give due consideration to proposals to strengthen, and not just weaken, the Volcker Rule.

Proprietary Trading

- Trading Account Definition. The definition of short-term should vary depending on the asset class in question.
- Rebuttable Presumption.
 - Relatively illiquid securities, such as bonds and derivatives, should be assigned a longer window of presumption, such as 90 or 120 days.
 - Resale of highly liquid securities, such as equities traded on major exchanges, within a 60-day timeframe should be considered proprietary trading, *per se*, with no possibility of rebuttal.

Covered Funds

- Definition of Covered Fund. The statute requires the covered fund definition to be at least as broad as all 3(c)(1) or 3(c)(7) funds.

Scope

- Community Banks. Do not exempt small and community banks from the Volcker Rule.
- [Full text of comment letter](#)

Public Citizen

- Proprietary trading fueled the financial crisis and drains the economy.
- The Volcker Rule has not harmed liquidity (citing the SEC's recent report on access to capital and market liquidity).
 - Volcker Agencies should publish enforcement actions, data for each individual bank trading desk and details of private equity and hedge fund ownership and activity (with a delay).
- [Full text of comment letter](#)

Think Tanks

American Action Forum

- The following reasons are listed for complete repeal of the Volcker Rule (or, at least, significant reform):
 - Proprietary trading did not cause the crisis.
 - “Plain vanilla” lending is a risky activity.
 - Diversification of revenues helps make banks more stable.
 - Trading restrictions undermine competitiveness of U.S. institutions.
 - Banning banks’ trading activities undermines the principal objective of reform.
- [Full text of comment letter](#)

Center for American Progress

- Volcker Rule Is Effective. The Volcker Rule appears to be working as intended, with few if any inappropriate or unintended costs.
- No Effect on Market Liquidity. There is no meaningful evidence to back up claims that the implementing regulations are negatively affecting market liquidity.
- Lack of Transparency. There is a lack of public disclosure regarding regulatory data on the current enforcement and impact of the rule.
- Changes to Volcker Rule Must Be Coordinated. If the Volcker Agencies do decide to pursue changes to the Volcker Rule, it must be done in a coordinated way and the OCC should wait until they have a confirmed Comptroller before any further action is taken.
- [Full text of comment letter](#)

Competitive Enterprise Institute

- ❖ The Volcker Rule has been ineffective at reducing systemic risk and too little has been done to address the moral hazard of government guarantees (e.g., deposit insurance).

Scope

- Community Banks. Exempt banking organizations with \$10 billion or less in total consolidated assets or less than \$1 billion in trading assets and liabilities from the regulation.
- Only Apply to Largest Institutions. Apply only to those institutions with significant proprietary trading activities, or those institutions with over \$500 billion in assets. Integrate the regulation into SIFI designation process.
- [Full text of comment letter](#)

Consulting Firms / Third-Party Service Providers

Data Boiler Technologies, LLC

Proprietary Trading

- Rebuttable Presumption. Replace the 60-day rebuttable presumption with a generalized “guilty until proven otherwise” clause (i.e., trades that are not qualified for the respective Volcker exemptions would be deemed to be proprietary trading).
- Permitted Activities.
 - Allow market makers to be opportunistic to seek proprietary gain under stress conditions if they inject liquidity into the market.
 - Adopt transaction-by-transaction approach to scrutinize trade activities.
 - Encourage automation to determine whether activities meet exemption requirements.
- RENTD. Consider impending market conditions and the dynamic of market microstructure, access the appropriateness of trades’ market timing and calculate at least daily.

Covered Funds

- Scope of Prohibition. Retain the covered fund provisions as they are. Take action periodically to check on banks’ progress, intervening as appropriate (in a confidential manner) to facilitate the orderly liquidation of toxic assets by banks.

Scope

- Foreign Excluded Funds. Do not exclude foreign excluded funds from the definition of banking entity.

Compliance

- Compliance Program. Facilitate banking entity compliance with the substantive provisions of the Volcker Rule, focus the compliance program on the “hard facts.”
- Community Banks. Grant small community banks (less than \$10 billion in consolidated assets) a one-year grace period to comply with the Volcker Rule, upon reaching minimum thresholds.
- Metrics. Eliminate flawed metrics and unnecessary compliance burden about risk culture to simplify the process of independent testing and enforcement.
- [Full text of comment letter](#)

MB Schoen & Associates, Inc.

Covered Funds

- Bank Owned Life Insurance Exclusion.
 - Clarify that the bank-owned life insurance exclusion from the definition of covered fund cannot be used as a conduit for a bank to acquire an interest in an investment exposure that, if held directly, would be subject to the covered fund definition.
 - Notwithstanding the above, clarify that bank-owned life insurance companies can have non-banking customers as policyholders with interests in an applicable separate account.
- [Full text of comment letter](#)

Foreign Regulators

Financial Services Agency Government of Japan & Bank of Japan

Proprietary Trading

- TOTUS Exemption. Clarify guidance on “arrange, negotiate or execute.”

Scope

- Extraterritoriality. Eliminate the extraterritorial application of the Volcker Rule by exempting foreign entities that do not engage in any transactions that may be potentially be harmful to the United States.
- Foreign Excluded Funds. Make permanent the July 21, 2017 interpretive relief.
- [Full text of comment letter](#)

Law Firms

Simpson Thacher & Bartlett LLP

- ❖ Supports the American Investment Council's letter.

Covered Funds

- Wholly-Owned Subsidiary Exclusion. The wholly-owned subsidiary definition should be revised to exclude investments by a foreign banking entity in a fund-of-one structure in which a fund is advised or sponsored by a non-bank manager.

Scope

- Foreign Excluded Funds. The banking entity definition should:
 - Expressly exclude qualifying foreign excluded funds as described in the July 21, 2017 statement of policy.
 - Clarify that the reference to "investors" in the second criterion of the qualifying foreign excluded funds definition includes a foreign bank and the reference to a "bona fide asset management business" in the fourth criterion of the definition refers to either a bank sponsored or non-bank sponsored asset management business.
- [Full text of comment letter](#)