Comptroller of the Currency
Administrator of National Banks

Transmittal - See OCC 2014-9

Subject:	Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds (the Volcker Rule)	Description:	Notice of Proposed Rulemaking

TO: Chief Executive Officers of All National Banks, Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

SUMMARY

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the U.S. Securities and Exchange Commission (the agencies) are requesting comment on a proposed rule that would implement section 619 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act), which contains certain prohibitions and restrictions on the ability of a banking entity to engage in proprietary trading and to have certain interests in, or relationships with, a hedge fund or private equity fund (a covered fund).

BACKGROUND

The Statute

Section 619 of the Dodd–Frank Act added a new section 13 to the Bank Holding Company Act of 1956 (BHC Act), which prohibits banking entities from engaging in proprietary trading or from acquiring or retaining any ownership interest in, or sponsoring, a covered fund. Section 13(d)(1) of that act, however, expressly exempts certain permitted activities from these prohibitions, including

- trading in certain government obligations;
- underwriting and market-making-related activities;
- risk-mitigating hedging activity;
- trading on behalf of customers;
- investments in Small Business Investment Companies (SBIC) and public interest investments;
- trading for the general account of insurance companies;
- organizing and offering a covered fund (including limited investments in such funds);
- foreign trading by non-U.S. banking entities; and
- foreign covered-fund activities by non-U.S. banking entities.

Section 13(f) of the BHC Act separately prohibits a banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a covered fund, and any affiliate of such a banking entity from entering into any transaction with the fund, or any other covered fund controlled by such fund, that would be a "covered transaction" as defined in section 23A of the Federal Reserve Act. Section 13(f) also provides that a banking entity may enter into certain prime brokerage transactions with any covered fund, but such transactions must be on market terms in accordance with the provisions of section 23B of the Federal Reserve Act.

Furthermore, under the statute, no banking entity may engage in a permitted activity if that activity would (i) involve or result in a material conflict of interest or material exposure of the banking entity to high-risk assets or high-risk trading strategies or (ii) pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States.

The Proposed Rule

The proposed rule applies to all national banks (except for certain limited purpose trust banks), federal savings associations, federal branches and agencies, and their subsidiaries (banks). The proposal implements the statutory prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 and the related statutory exemptions for permitted activities described above. Banks that are engaged in activities or in making investments that are permissible under the proposed rule nevertheless are required to satisfy certain compliance requirements. The extent of the requirements escalates depending on the volume of the activity. In some cases, a compliance program is required, and at a minimum, banks that do not engage in activities or make investments that are prohibited or restricted by the proposed rule must put into place policies and procedures that are designed to prevent them from becoming engaged in such activities or from making such investments without establishing a compliance program required by the proposed rule.

The proposed rule is divided into four subparts and contains three appendixes, as follows:

- Subpart A of the proposed rule describes the authority, scope, purpose, and relationship to other authorities of the rule and defines terms used commonly throughout the rule;

- Subpart B of the proposed rule prohibits proprietary trading, defines terms relevant to covered trading activity, sets forth exemptions from the prohibition on proprietary trading and limitations on those exemptions, and requires certain banking entities to report quantitative measurements with respect to their trading activities;

- Subpart C of the proposed rule prohibits or restricts acquiring or retaining an ownership interest in, and certain relationships with, a covered fund, defines terms relevant to covered fund activities and investments, and sets forth exemptions from the restrictions on covered fund activities and investments and limitations on those exemptions;

- Subpart D of the proposed rule generally requires banking entities to establish a compliance program by July 21, 2012, that includes six core elements: written policies and procedures, internal controls, a management framework, independent testing of the compliance program, training, and record keeping;

- Appendix A of the proposed rule details the quantitative measurements that certain banking entities may be required to compute and report with respect to their trading activities;

- Appendix B of the proposed rule provides commentary regarding the factors the agencies propose to use to help distinguish permitted market-making-related activities from prohibited proprietary trading; and

- Appendix C of the proposed rule describes a more detailed compliance program that certain banking entities must establish, as required under subpart D.

The proposed rule was published in the *Federal Register* on November 7, 2011. *See* 76 Fed. Reg. 68846. Comments on the proposal will be accepted until close of business January 13, 2012. Because of its length, the proposed rule is not attached to this bulletin but can be found at http://www.gpo.gov/fdsys/pkg/FR-2011-11-07/pdf/2011-27184.pdf.

FURTHER INFORMATION

For further information, please contact Elisabeth Katz, Assistant Director, or Ursula Pfeil, Counsel, Legislative and Regulatory Activities Division, at (202) 874-5090; or Roman Goldstein, Attorney, Securities and Corporate Practices Division, at (202) 874-5210.

/signed/
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