

January 17, 2012

The Honorable Shelley Moore Capito  
Chairman, Subcommittee on Financial  
Institutions and Consumer Credit  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Scott Garrett  
Chairman, Subcommittee on Capital Markets  
and Government Sponsored Enterprises  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

Re: Proposed Rules on Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Volcker Rule”)

Dear Chairman Capito and Chairman Garrett:

I am writing on behalf of the members of the American Bankers Association (ABA) concerning the January 18, 2012, hearing on the Volcker Rule in the Subcommittee on Capital Markets and Government Sponsored Enterprises and the Subcommittee on Financial Institutions and Consumer Credit. ABA represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its two million employees. In analyzing the federal regulatory agencies’ Notice of Proposed Rulemaking to implement the Volcker Rule, we wish to raise a number of issues for your consideration as you review this complex rule and its implementing regulations.

- (1) In spite of the Volcker Rule’s objective to eliminate proprietary trading undertaken by more complex banks, the proposed rules are drafted to apply to every bank, regardless of size or activity; therefore, all community and regional banks will be required to adapt their compliance programs to the Volcker Rule’s requirements.
- (2) While the objective of regulatory rulemaking is to clarify legislative intent, the proposed rules are pockmarked with hundreds of questions and open-ended issues, making it exceedingly difficult to know what the proposed rules might look like when finalized.<sup>1</sup>
- (3) Notwithstanding regulatory rulemaking’s goal to provide certainty, the proposed rules are much too vague and complex. As a result, banks will neither know how to comply nor whether, at any time, they are in compliance with regulatory requirements.
- (4) The proposed rules unnecessarily constrain liquidity across domestic and global markets with restrictions on asset liability management and other principal trading by banks.
- (5) The proposed rules call for supervision and enforcement of the same statutory mandate by multiple regulators – all looking at the same bank – setting the stage for a disordered

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<sup>1</sup> Indeed, the Proposed Rules appear much more like an Advanced Notice of Proposed Rulemaking than an ordinary rulemaking release, thereby raising process issues, including the ability of the public to comment on a clearly drawn and directed set of proposed rules.

patchwork quilt of conflicting regulations and interpretations and further eroding compliance planning and regulatory certainty.

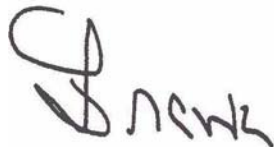
Congress has already sounded the alarm on the consequences to global competitiveness. As stated in a recent letter from you, Chairman Bachus, and Representative Hensarling to the agencies, the proposed rules may diminish the strength of U.S. banks in the global financial marketplace.<sup>2</sup> There is the additional concern that a number of the activities prohibited under the Volcker Rule would simply migrate to other sectors of the economy or even overseas, particularly to unregulated or lightly regulated financial entities where much of the recent financial turmoil found its origins.

At the same time, we note that after enactment of the Volcker Rule, a report by the U.S. Government Accountability Office (GAO) concluded that neither proprietary trading nor investments in hedge funds/private equity funds by banks were a proximate cause of the financial crisis of 2008.<sup>3</sup> The GAO further stated in the report that “FDIC staff, whose organization oversees bank failures, said they were not aware of any bank failures that had resulted from stand-alone proprietary trading.”<sup>4</sup> The ban on bank proprietary trading and investment activity, therefore, should be narrowly and precisely tailored to properly achieve the Volcker Rule’s objectives.

The proposed rules as written are unworkable and fail to carry out the intent of Congress to clearly define prohibited activity in proprietary trading and investments in hedge funds and private equity funds. ABA therefore requests that Congress (i) communicate its Volcker Rule objectives to the agencies in writing and at the hearing, and (ii) call for a re-proposed set of rules for public comment that readily align with such objectives.

Thank you for your attention to this very important matter. ABA stands ready to work with the Committee on this important issue.

Sincerely,



Frank Keating

Cc: The Honorable Spencer Bachus, Chairman, Financial Services Committee  
The Honorable Barney Frank, Ranking Member, Financial Services Committee  
The Honorable Carolyn Maloney, Ranking Member, Financial Institutions Subcommittee  
The Honorable Maxine Waters, Ranking Member, Capital Markets Subcommittee  
The Honorable Tim Johnson, Chairman, Senate Banking Committee  
The Honorable Richard Shelby, Ranking Member, Senate Banking Committee  
Members of the House Financial Services Committee  
Members of the Senate Banking Committee

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<sup>2</sup> Letter from Reps. Bachus, Hensarling, Capito, and Garrett to the Agencies (Dec. 7, 2011).

<sup>3</sup> GAO Report, “Regulators Will Need More Comprehensive Information to Fully Monitor Compliance with New Restrictions When Implemented” (July 2011).

<sup>4</sup> Id.