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September 19, 2017

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20210

Re: Comment on Proprietary Trading and Certain Interest in and Relationships
with Covered Funds (Volcker Rule) 12 CFR Part 44 (Docket ID OCC-
2017-0014)

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to respond to the Office of the Comptroller of the Currency (OCC) request for information concerning how the final rule implementing section 13 of the Bank Holding Company Act (commonly referred to as the “Volcker Rule”) should be revised to better accomplish the purpose of the statute. The OCC is also soliciting comments for ways the final rule could be improved and administered more effectively.

Background

Section 619 of the Dodd-Frank Act created a new section 13 of the Bank Holding Company Act, which generally prohibits “banking entities” (e.g., insured depository institutions, companies that control an insured depository institution, and their affiliates and subsidiaries) from engaging in proprietary trading and from holding an ownership

¹ *The Independent Community Bankers of America®*, the nation’s voice for more than 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 765,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA’s website at www.icba.org.

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interest in, sponsoring, or having certain relationships with hedge fund and private equity funds. Section 13 of the BHC Act also authorized the banking agencies, the SEC and the CFTC to issue implementing regulations. The agencies issued final regulations in December 2013, which required banks to conform their proprietary trading activities and investments to the requirements of section 13 and the final rule (together, referred to as the “Volcker Rule”) by July 21, 2015.

ICBA’s Comments

When the banking agencies proposed implementing regulations under section 13, ICBA was generally supportive of the rule. In a comment letter to the agencies dated February 13, 2012, we stated our general support for the Volcker Rule and pointed out that government subsidies like federal deposit insurance and liquidity facilities should not fund, even indirectly, speculative trading by banks and their affiliates.

However, ever since the Volcker Rule was issued, community banks have had problems and concerns with it. Shortly after the issuance of the rule, community banks were shocked and dismayed by the news that their ownership of collateralized debt obligations (CDOs) backed by trust preferred securities (TruPS) could be considered an “ownership interest” in a “covered fund” in violation of the Volcker Rule, and subject to divestment. Many community banks that owned TruPS CDOs were advised by their accountants that they had to take an immediate impairment to their investment under accounting standards. Although subsequent guidance by the banking agencies clarified that most TruPS CDOs were not “covered funds,” the whole experience made community banks very concerned about being subject to the Volcker Rule.

Community banks have also expressed concerns with the compliance requirements under the Volcker Rule even though the rule expressly tailors these requirements to the size of the institution. In some instances, they have had to hire consultants and attorneys to figure out if they are even subject to the rule.

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. Community banks that routinely purchase and sell government securities and municipal securities have also had to use consultants to ensure that they are not technically engaging in proprietary trading under the definition of the rule. Furthermore, community banks that were grandfathered under Section 24 of the Federal Deposit Insurance Act, and are allowed to own equity securities, have also raised many questions about complying with the Volcker Rule.

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ICBA believes that all banking institutions with assets less than \$50 billion should be completely exempted under the Volcker Rule. A complete community bank exemption would ensure that these institutions which do not generally engage in proprietary trading would not have to expend any resources and/or money to comply with the rule. Community banks would no longer have to update their policies and procedures to show that they are aware of the Volcker Rules and its prohibitions. In short, a complete exemption would guarantee that community banks could focus their attention on making loans to customers in the communities they serve and not on Volcker Rule compliance.

The latest report from the Treasury Department strongly endorses a community bank exemption under the Volcker Rule. That report entitled “A Financial System that Creates Economic Opportunities: Banks and Credit Unions” said that:

“Although the regulations provide banking entities with \$10 billion or less in assets with accommodations from the rule’s compliance program requirements, these banks have still been required to expend considerable resources to ensure that their activities do not constitute prohibited proprietary trading. In particular, such institutions, even if they do not engage in any trading, have had to expend resources to confirm that transactions they engage in for hedging their interest rate and other business risks are permitted under the Volcker Rule. The relatively small risk that these institutions pose to the financial system does not justify the compliance burden of the rule, and the risk posed by the limited amount of trading that banks of this size could engage in can easily be addressed through existing prudential regulation and supervision. For these reasons, banking organizations with \$10 billion or less in total consolidated assets should be entirely exempt from all aspects of the Volcker Rule. This exemption would allow these banks to focus on their core business of lending to consumers and small and mid-size businesses.”²

While the Treasury report recommended an exemption for banking entities with \$10 billion or less in assets, it also suggested that banking entities with over \$10 billion in assets should not be subject to the burdens of complying with the Volcker Rule’s proprietary trading prohibition if they do not have substantial trading activity. Treasury suggested that an exemption from the proprietary trading prohibition should be provided for all consolidated banking organizations, regardless of size, that have less than \$1 billion in trading assets and trading liabilities and whose trading assets and trading liabilities represent 10% or less of total assets.

Similarly, former Federal Reserve Governor Daniel Tarullo and Acting Comptroller of the Currency Keith Noreika have also endorsed a community bank exemption. Acting

² U.S. Department of the Treasury Report, A Financial System that Creates Economic Opportunities: Banks and Credit Unions (2017), pp. 72-73

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Comptroller Noreika said in recent testimony to the Senate Banking Committee³ that “exempting community banks...would reduce complexity, cost, and burden associated with the Volcker Rule by providing a tailored approach to addressing the risks the Rule was designed to contain.”

In conclusion, whether it concerns the prohibitions on proprietary trading or owning “covered funds,” community banks continue to be very much concerned about complying with the Volcker Rule. Only a complete Volcker Rule exemption for all banking organizations with assets less than \$50 billion will provide the necessary relief so that community banks will not have to expend money and resources to comply with the rule and will be free to lend to those small and mid-size businesses in their local communities.

ICBA appreciates the opportunity to comment on the Volcker Rule. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

³ See Acting Comptroller of the Currency Keith Noreika, Testimony before the Senate Banking Committee (June 22, 2017)

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