COMMENT LETTER

September 21, 2017

ICI Submits Letter to OCC on Volcker Rule Reform (pdf)

September 21, 2017 Legislative and Regulatory Activities Division Office of the Comptroller of the Currency 400 7th Street SW., Suite 3E-218 Washington, D.C. 20219 Re: Proprietary Trading and Certain Interests in and Relationships with Covered Funds (Volcker Rule); Request for Public Input Dear Sirs and Mesdames: The Investment Company Institute1 appreciates the opportunity to provide comments to the Office of the Comptroller of the Currency on ways to improve the regulations implementing Section 13 of the Bank Holding Company Act, commonly known as the Volcker Rule.2 By all acknowledgements, the Volcker Rule was never intended to apply to US registered investment companies (RICs) and similar funds organized outside the United States (which we refer to collectively as "regulated funds"). Nevertheless, ICI members have been affected by the complexities and ambiguities of the Final Rule. Although the Agencies have sought to ameliorate some of these unfortunate consequences, they have done so through piecemeal guidance rather than a transparent rulemaking process. We therefore welcome the OCC's request for public input on how the Final Rule and its administration may be improved. We respectfully urge the Agencies to take the actions outlined 1 The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$20.4 trillion in the United States, serving more than 95 million US shareholders, and US$6.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. 2 In this letter, we cite to the common sections of the implementing regulations (Final Rule) as adopted by the OCC, Federal Reserve Board, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, and Securities and Exchange Commission (collectively, the Agencies). OCC Legislative and Regulatory Activities Division September 21, 2017 Page 2 of 14 below so that the Final Rule accomplishes the purposes of the Volcker Rule without creating unnecessary spillover effects for regulated funds worldwide. Executive Summary Congress enacted the Volcker Rule to restrict banks from using their own resources to trade for purposes unrelated to serving clients and to address perceived conflicts of interest in certain transactions or relationships. To accomplish these goals, the Volcker Rule prohibits banks and their affiliates (referred to as "banking entities") from engaging in "proprietary trading."3 The Volcker Rule also generally prohibits banking entities from sponsoring or investing in hedge funds, private equity funds, or other similar funds (referred to as "covered funds"). In the Final Rule, the Agencies appropriately excluded RICs from the definition of covered fund. They also sought to provide a corresponding exclusion for regulated funds organized outside the United States.4 The Final Rule nonetheless resulted in several concerns for the global regulated fund industry. To alleviate these concerns and fully effectuate Congress's intent, we strongly encourage the OCC and the other Agencies to do the following: Revise the definition of "banking entity" to exclude all regulated funds. The lack of express exclusions for RICs and regulated non-US funds leaves open the possibility that such a fund could be deemed to be a "banking entity" and thus subject to the full panoply of trading and investment restrictions in the Volcker Rule. This is an untenable result, and one that is directly at odds with the intent of Congress. Simplify the exclusion for "foreign public funds" from the definition of "covered fund." The current exclusion is available only to regulated non-US funds that adhere to certain additional conditions regarding their distribution. These conditions are at odds with the Agencies' intent to treat regulated non-US funds in a manner similar to RICs. Evaluate ways to provide increased flexibility for market making-related activities. Providing flexibility under the Volcker Rule for banking entities to engage in bona fide market making activities is a crucial part of ensuring efficient markets, and sufficient liquidity, for regulated funds and other market participants. 3 There are exclusions for "permitted activities," such as market making-related activities, as defined in the statute and the Final Rule. 4 In this letter, we use the term "regulated non-US funds" to refer to regulated funds organized outside the United States. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 3 of 14 Consider procedural changes to improve the administration of the Final Rule. In our experience to date, the Agencies' efforts to address issues presented by the Volcker Rule have been opaque and cumbersome. We urge the Agencies to consider changes that would improve the administration of the Final Rule going forward. Discussion I. Revise the Definition of "Banking Entity" to Exclude All Regulated Funds The Volcker Rule's prohibition on proprietary trading and restrictions on activities involving hedge funds and private equity funds apply to "banking entities."5 A regulated fund would fall within the definition of "banking entity" if it were considered to be an affiliate of a banking entity. In that event, the fund itself would be subject to the trading and investment restrictions in the Volcker Rule. In comments on the proposed regulations, we urged the Agencies to provide express exclusions for RICs and for regulated funds organized outside the United States from the definition of banking entity.6 We reiterate those recommendations here. As we explain below, the regulated fund industry's experience with the Final Rule to date demonstrates that such exclusions are necessary to effectuate congressional intent. Why Registered Investment Companies Should Not Be Treated as Banking Entities During development of the Final Rule, the Agencies recognized that, because of its broad scope, the definition of banking entity might include a RIC. In the preamble to the proposed regulations, the Agencies noted that a mutual fund generally would not be considered a subsidiary or affiliate of a banking entity if the banking entity only provides advisory or administrative services to, has certain limited investments in, or organizes, sponsors, and manages 5 The Final Rule defines "banking entity" to include: (1) an insured depository institution; (2) a company that controls an insured depository institution; (3) a company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978; and (4) subject to certain exceptions, an affiliate or subsidiary of any of the foregoing. Final Rule § _.2(c). "Affiliate" and "subsidiary" are defined by reference to the definitions of those terms in Section 2 of the BHCA. 6 Letters to the Agencies from ICI and ICI Global, dated Feb. 13, 2012. The ICI Letter is available at https://www.ici.org/pdf/25909.pdf and the ICI Global Letter is available at https://www.iciglobal.org/pdf/12_icig_volcker.pdf. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 4 of 14 a mutual fund in accordance with Bank Holding Company Act (BHCA) rules.7 The Agencies sought public comment on whether the final regulations expressly should exclude mutual funds and other RICs from the definition of "banking entity."8 In comments to the Agencies, ICI and other stakeholders advised that the absence of an express exclusion for RICs from the banking entity definition would leave open the possibility that a RIC—particularly in the "seeding" stage—could become subject to the trading and investment restrictions of the Volcker Rule.9 Commenters explained that seeding is a common industry practice and the primary way for an investment adviser to launch a new RIC. At the outset, the adviser provides the initial "seed" capital in exchange for all or nearly all of the shares of the RIC. The adviser then attempts to establish the RIC, test its investment strategy, and develop an investment track record that will attract investors—with the objective of reducing the adviser's relative ownership of the RIC as investors buy RIC shares. ICI's letter advised that even during its seeding period, a RIC must be operated in accordance with the comprehensive regulatory regime administered by the SEC under the Investment Company Act of 1940 and other federal securities laws. Of particular significance in this context, RICs are subject to oversight by an independent board of directors, strong conflict of interest protections through prohibitions on affiliated transactions, and strict restrictions on leverage.10 In other words, the adviser would not be able to use a seeded RIC to thwart the policy goals of the Volcker Rule. Regrettably, the Final Rule does not exclude RICs from the definition of banking entity and offers only limited relief for seeding of new RICs. Under the Final Rule, a banking entity may hold 25% or more of a RIC during a one-year seeding period and may apply to the Federal Reserve Board for up to two one-year extensions of the seeding period. This narrow seeding exception does not account for prevailing industry practices and does not address seeding practices in a variety of contexts. 7 See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Private Equity Funds, 76 Fed. Reg. 68846, 68856 (Nov. 7, 2011) (Proposing Release). This statement is consistent with longstanding Federal Reserve Board precedent. See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Certain Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5536, 5676 n. 1734 (Adopting Release) (citing applicable Board regulations and orders). 8 Proposing Release at 68856 (Questions 6 and 8). 9 ICI Letter, supra note 6, at 10-12. 10 Id. at 12. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 5 of 14 Multi-year seeding periods are common for (and necessary to) the successful launch of RICs, largely because investors expect a demonstrated track record before investing in a new fund. Most RICs need to establish at least a three-year track record before analysts such as Morningstar will cover them, or consultants to institutional investors and pension plans will recommend them. Sometimes, a longer timeframe is required. For example, a RIC's investment strategy may be "out of favor" with investors in the fund's early years, but the adviser believes it will be an attractive investment option when market conditions change. As a result, it is necessary for advisers to have the flexibility to leave seed capital in a RIC for what could be a lengthy period of time. Following issuance of the Final Rule, some bank-affiliated advisers considered refraining from launching new RICs, uncertain that they would be able to avail those funds of a sufficient seeding period. Of more immediate concern, existing RICs—those in their seeding period, including RICs that had already sold shares to unaffiliated investors—required additional time to meet the compliance deadline and avoid being deemed to be "banking entities" under the Volcker Rule. Bank-affiliated advisers feared that, absent relief, they could be forced to restructure the RICs by selling off their stakes or liquidate the RICs. ICI and other stakeholders sought to engage the Agencies on these issues and obtain further relief.11 Agency action on the seeding issue came in July 2015—only days before the deadline for compliance with the Volcker Rule. The guidance, published in the form of a "frequently asked question" on the Agencies' websites, provided much-needed immediate relief. FAQ 16 states, in relevant part, that "the staffs of the Agencies understand that the seeding period for an entity that is a RIC or [foreign public fund] may take some time, for example, three years, the maximum period expressly permitted for seeding a covered fund under the implementing rules."12 Although greatly welcomed, FAQ 16 has provided an incomplete solution. First, it interprets but does not alter the legal requirements of the Final Rule—an approach that can cause needless confusion and is subject to change without the procedural protections that formal rulemaking provides. Second, the guidance introduces other complexities because it could be read to suggest that, in the ordinary course, a three-year seeding period may be the maximum allowed. As a result, some industry participants remain uncertain about longer seeding strategies, which may be necessary and common for certain types of RICs. 11 See, e.g., Letter to The Honorable Janet Yellen, Chair, The Federal Reserve System, from Paul Schott Stevens, President & CEO, ICI, dated June 1, 2015 (2015 ICI Letter to Chair Yellen). 12 The FAQs are available at https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm. FAQ 16 also provides seeding relief for certain regulated non-US funds, which we discuss in the next section. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 6 of 14 We respectfully submit that the Agencies can eliminate needless confusion and complexity by amending the Final Rule to provide an express exclusion for RICs from the banking entity definition. Such an approach would: Resolve outstanding uncertainties regarding seeding practices. As noted above, to launch new RICs, bank-affiliated advisers require certainty that they will be able to avail these funds of a sufficient seeding period. In the absence of such certainty, some entities may refrain from launching new funds, which would lessen investor options with respect to highly regulated investment products that the Volcker Rule was never intended to affect. Address seeding in other contexts, such as seeding of third-party RICs. Banking entities may engage in seeding practices that do not fall neatly within the contours of FAQ 16. For example, a banking entity may provide seed capital to support the launch of third-party RICs, such as new exchange-traded funds (ETFs). In this case, the banking entity would purchase and hold ETF shares as the fund works to establish regular trading and liquidity on the secondary market. As noted earlier, the ETF would be operated in accordance with the Investment Company Act and other federal securities laws during the seeding period, making it highly unlikely that the banking entity could use its seeding investment to thwart the policy goals of the Volcker Rule. Address so-called "end of life" issues. Banking entity issues also may arise at the other end of a RIC's life-cycle—that is, during its liquidation. Advisers routinely close or reorganize RICs for a variety of reasons (e.g., inability to attract or maintain sufficient assets, departure of a key portfolio manager, merger with or acquisition of a fund adviser offering similar RICs, poor investment performance). When a RIC does need to liquidate, it adheres to requirements in the Investment Company Act and other relevant laws, including approval by the RIC's board of directors and board oversight of the liquidation process. As unaffiliated investors redeem their shares, the adviser may find itself holding a greater than 25 percent ownership interest in the RIC. This temporary "control" of the RIC during its liquidation should not raise any concerns under the Volcker Rule. Why Regulated Funds Organized Outside the United States Should Not Be Treated as Banking Entities Regulated funds organized outside the United States have faced challenges similar to, but more extensive than, those described above with respect to RICs. During development of the Final Rule, we and other stakeholders recommended that the Agencies provide an express exclusion for regulated non-US funds from the definition of banking OCC Legislative and Regulatory Activities Division September 21, 2017 Page 7 of 14 entity. As in the case of RICs, failure to provide such an exclusion would leave open the possibility that a regulated non-US fund could become subject to the trading and investment restrictions of the Volcker Rule—an outcome that we described as "something altogether at odds with the nature of their business as collective investment vehicles for the general public."13 We observed that an exclusion was appropriate because regulated non-US funds are fundamentally different from the hedge funds and private equity funds targeted by the Volcker Rule and because Congress sought to limit the Rule's extraterritorial impact. As in the case of RICs, the Final Rule did not exclude regulated non-US funds from the definition of banking entity. The difficulties for regulated non-US funds are compounded by the fact that, unlike for RICs, the preamble to the Final Rule gives no assurances that a regulated non-US fund generally will not be considered an affiliate of its banking entity sponsor. Nor does the Final Rule address the issue of seeding regulated non-US funds. We and other stakeholders engaged with the Agencies to address these shortcomings.14 To their credit, the Agencies did provide helpful guidance (and much needed relief) to certain regulated non-US funds—namely, those eligible to rely on the "foreign public fund" exclusion from the definition of covered fund. In particular, the Agencies issued two separate FAQs in the weeks before the July 2015 compliance deadline. One was FAQ 16, which permits foreign public funds to take advantage of the same seeding relief that the Agencies afforded to RICs.15 The second was FAQ 14, which sought to address the fact that, under the Final Rule, a significant portion of foreign public funds could be deemed to be controlled by, and thus affiliated with, their banking entity sponsors. Such a result would make those funds subject to the Volcker Rule in their own right. In FAQ 14, staff of the Agencies acknowledge that in some jurisdictions outside the United States, sponsors of regulated funds "select the majority of the fund's directors or trustees, or otherwise control the fund for purposes of the BHCA by contract or through a controlled corporate director."16 The FAQ observes that "these and other corporate governance structures abroad therefore have raised questions regarding whether foreign public funds that are sponsored and distributed outside the U.S. and in accordance with foreign laws are banking entities by virtue of their relationships with a banking entity." Responding to these questions, the FAQ indicates that the activities and investments of a foreign public fund would not be attributed to the banking entity sponsor if the sponsor (i) does not control 25 percent or more of the fund's 13 ICI Global Letter, supra note 6, at 8. 14 See, e.g., 2015 ICI Letter to Chair Yellen; Letter of the European Fund and Asset Management Association to the Agencies (Oct. 16, 2014). 15 See infra page 5 for additional discussion regarding FAQ 16. 16 The FAQ recognizes that, in contrast, a bank holding company may organize, sponsor and manage a RIC in the United States without being deemed to control the RIC for BHCA purposes. voting shares after the seeding period and (ii) provides investment advisory and other services to the fund "in compliance with applicable limitations in the relevant foreign jurisdiction." The FAQ further indicates that a foreign public fund would not be deemed a banking entity solely by virtue of its relationship with the sponsoring banking entity provided, among other things, that the relationship "is in compliance with applicable limitations in the foreign jurisdiction in which the foreign public fund operates." In our view, the complicated patchwork of interpretations necessary to avoid unworkable outcomes illustrates just how important it is for the Agencies to re-examine the Final Rule and its impact on regulated funds organized outside the United States. We believe the Agencies will conclude that revising the Final Rule to exclude all regulated non-US funds from the definition of banking entity is the most straightforward and logical course of action. II. Simplify the Exclusion for "Foreign Public Funds" from the Definition of "Covered Fund" As originally proposed, the definition of "covered fund" was exceedingly broad. The Agencies recognized this potential overreach and sought to adopt "a tailored definition" that would focus on "vehicles used for the investment purposes that were the target of [BHCA Section 13]"— namely, hedge funds and private equity funds.17 Consistent with comments from ICI18 and other stakeholders, the Final Rule expressly excludes certain regulated non-US funds from the definition of "covered fund." According to the preamble, this "foreign public fund" exclusion "is designed to treat foreign public funds consistently with similar U.S. funds and to limit the extraterritorial application of [the Volcker Rule], including by permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States."19 Among the Agencies' expectations are that investors in foreign public funds would "be entitled to the full protection of securities laws in the home jurisdiction of the fund" and that "a fund authorized to sell ownership interests to such retail investors [would] be of a type that is more similar to a U.S. registered investment company than to a U.S. covered fund."20 We applaud the Agencies for including the foreign public fund exclusion in the Final Rule. Without it, the full panoply of restrictions in the Volcker Rule would have been applied to 17 Adopting Release at 5671. 18 ICI Global Letter, supra note 6, at 5-7. 19 Adopting Release at 5678. 20 Id. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 9 of 14 comprehensively regulated non-US funds having little in common with the hedge funds and private equity funds that concerned Congress. We believe, however, that the Agencies crafted the exclusion too narrowly. To qualify as a "foreign public fund," the fund's ownership interests must be sold "predominantly" through one or more public offerings outside of the United States.21 By this, the Agencies "generally expect that an offering is made predominantly outside of the United States if 85 percent or more of the fund's interests are sold to investors that are not residents of the United States."22 This requirement is contrary to the Agencies' stated objective of "treat[ing] foreign public funds consistent with similar U.S. funds" because the exclusion for RICs places no conditions on their distribution. As with RICs, an exclusion for regulated non-US funds is warranted because such funds are regulated and operated as investment vehicles broadly available to the public. As a practical matter, this "predominance" requirement presents considerable compliance challenges. Distribution of retail fund products often depends on intermediaries or other third parties. For this reason, fund sponsors often find it difficult if not impossible to identify their underlying investors—much less determine, with any degree of certainty, the residency status of most of a fund's investors. Additionally, if the fund's sponsor is a US banking entity, the fund can qualify for the foreign public fund exclusion only if its ownership interests are sold "predominantly" to unaffiliated parties.23 This would require the fund sponsor, for example, to track—and possibly limit— investments in the fund by its directors and employees. The Agencies adopted this restriction on the theory that foreign public funds sponsored by US banking entities "may present heightened risks of evasion."24 The preamble to the Final Rule presents no compelling rationale, however, for why potential sales of a comprehensively regulated non-US fund to affiliated persons raises such strong evasion concerns. The predominance restriction, moreover, strikes us as inconsistent with the regulation of RICs in the US, where the SEC views the ownership of fund shares by the portfolio manager, for example, in positive terms.25 For US banking entities, the two "predominance" restrictions make it more difficult to offer retail investment vehicles in the same manner and to the same extent as foreign banking 21 Final Rule § _.10(c)(1). 22 Adopting Release at 5678. 23 Id. 24 Id. at 5679. 25 See SEC, Disclosure Regarding Portfolio Managers of Registered Management Investment Companies, 69 Fed. Reg. 52788, 52792 (Aug. 27, 2004) (observing that disclosure of a portfolio manager's ownership provides "a direct indication of his or her alignment with the interests of shareholders in that fund."). OCC Legislative and Regulatory Activities Division September 21, 2017 Page 10 of 14 organizations. Creating such competitive imbalances clearly was not a result that Congress intended when it enacted the Volcker Rule. We accordingly urge the Agencies to eliminate these restrictions. Regulated non-US funds, like their US counterparts, are comprehensively regulated for sale to the investing public. If a fund is (a) organized or formed under non-US law, (b) authorized for public sale to retail investors, and (c) regulated as a public investment fund, that fund should not be treated as a "covered fund" under the Volcker Rule. Finally, we note that eliminating the “predominance” restrictions in the foreign public fund exclusion would not foreclose the OCC and the other Agencies from exercising their broad supervisory authority to address any particular instances of evasion. As we explained to the Agencies in 2012, if a foreign regulator authorizes a regulated non-US fund that US banking regulators believe poses significantly more risk to a banking entity than a RIC would pose, the US banking regulators have ample authority to step in and protect the banking entity from excessive risk.26 III. Evaluate Ways to Provide Increased Flexibility for Market Making-Related Activities In its notice, the OCC describes how the Final Rule implements the proprietary trading prohibition and its exclusions and exemptions. According to the OCC, banking entities have reported that complying with these exclusions and exemptions is unduly burdensome and the Final Rule’s requirements may result in banking entities underutilizing them. The notice further states that “industry groups, members of Congress, and others have argued that the rule does not provide sufficient latitude for banking entities to engage in market making, which they have argued may have a negative impact on some measures of market liquidity.”27 The OCC poses a series of questions on possible ways to address this and other issues raised by the proprietary trading prohibition and the related exclusions and exemptions as codified in the Final Rule. ICI welcomes the OCC’s interest in examining these matters. Dating back to congressional passage of the Volcker Rule and development of the Final Rule, ICI has stressed the importance of ensuring sufficient flexibility for banking entities to engage in bona fide market making activities. This is a crucial part of ensuring efficient markets, and sufficient liquidity, for regulated funds and other market participants. 26 ICI Global Letter, supra note 6, at 7. We note that Title VI of the Dodd-Frank Act expressly amended the Federal Reserve Board’s supervisory authority over bank holding companies to enhance its ability to examine the activities of, and take action with respect to, investment advisers, broker-dealers, and other functionally regulated subsidiaries. 27 OCC, Proprietary Trading and Certain Interests in and Relationships with Covered Funds; Request for Public Input, 82 Fed. Reg. at 36692, 36695 (Aug. 7, 2017) (footnote omitted). OCC Legislative and Regulatory Activities Division September 21, 2017 Page 11 of 14 Market liquidity is vital to the everyday operations of all regulated funds, and especially important for funds that offer investors the ability to redeem their shares. Mutual funds, for example, are required by the Investment Company Act to issue “redeemable securities.”28 To invest cash they receive when investors purchase fund shares and to meet investor redemption requests on a daily basis, mutual funds must have efficient, orderly markets. Regulated funds also rely on adequate liquidity when making investment decisions and when trading the instruments in which they invest. Key investment criteria analyzed by portfolio managers at regulated funds include whether a position can be sold in a timely and cost-efficient manner. And, if regulated funds are concerned about the possibility that the liquidity of particular instruments could become impaired in the future, they may be reluctant to invest in those instruments altogether. In our 2012 letter to the Agencies, we stressed that the complexity of the proposed regulations could have a negative impact on market liquidity and, in turn, adversely affect RICs.29 We specifically raised concerns with respect to the proposed “rebuttable presumption” for proprietary trading, which we felt was overly broad and would introduce significant compliance challenges. We observed: While the Proposed Rule provides a mechanism to rebut this presumption, doing so appears extremely complex, onerous, and risky… This presumption of prohibited activity prejudices the analysis of a banking entity’s trading activity from the outset. Given the difficulties of overcoming the presumption, market makers understandably will be highly reluctant to make markets with respect to any instrument they believe could fall within the proprietary trading prohibition.30 We also expressed serious concerns with several of the proposed conditions of the market making exemption. We noted, for example, that in less liquid markets where trades are infrequent and customer demand is hard to predict, it might be difficult for a market maker to satisfy the condition that its activity be "designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties" (commonly referred to as "RENTD").31 Despite some improvements around the edges, the exemption for permitted market making in the Final Rule 28 See Section 2(a)(32) of the Investment Company Act (generally defining "redeemable security" as " any security…under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled…to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."). 29 ICI Letter at 20. 30 Id. at 21-22. 31 Id. at 24. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 12 of 14 remains an area of considerable complexity and compliance challenges.32 These challenges can have negative repercussions for clients such as regulated funds. Our members have reported, for example, instances of brokers declining to execute trades because of difficulty in documenting their RENTD compliance. The OCC asks what evidence there is that the proprietary trading prohibition does or does not have a negative impact on market liquidity. Commentary and analysis on this topic has been mixed. This is not surprising, given that liquidity is both hard to define and hard to measure. In addition, liquidity is affected by many variables. For example, there is no single metric that reliably can measure bond market liquidity. Rather, a variety of metrics are commonly used as indicators of liquidity. These include trading volume, turnover ratio, bid-ask spreads, trade size, immediacy (in other words, the time it takes to trade a bond), price impact measures, and statistics related to market making. In our view, it is not necessary for the Agencies to establish a direct causal link between the Volcker Rule and changes to market liquidity before proceeding. We think it is appropriate for the Agencies to 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. In a recent report, the Department of the Treasury offered recommendations for increasing banking entities' flexibility for market making—including through changes that Treasury believes could be accomplished by the Agencies, without the need to amend the statute.33 We encourage the OCC and the other Agencies to evaluate those recommendations along with the input that other commenters provide in response to the OCC's notice. IV. Consider Procedural Changes to Improve the Administration of the Final Rule The OCC invites comments suggesting improvements in the ways that the Final Rule has been administered to date. In this regard, we recognize the significant efforts of the OCC and other Agencies in issuing the Final Rule and then attempting to address its ambiguities and unintended 32 See, e.g., Michael Bright, Jackson Mueller and Phillip Swagel, FinReg21: Modernizing Financial Regulation for the 21st Century, Milken Institute Center for Financial Markets (March 24, 2017) at 3, available at http://www.milkeninstitute.org/publications/view/853 ("For example, if a trader buys a 10-year corporate bond from a client, but cannot easily re-sell that bond and instead sells a 10-year Treasury—meaning the trader is long a corporate note and short the 10-year Treasury note. Is this a 'prop trade,' or is it simply appropriate risk management in a rapidly moving market? How long can the trader hold this position before it becomes a 'prop trade?' This is a simple trade but not a simple question in the context of the Volcker Rule. And yet it seems obvious that this series of events should constitute allowable market-making—the normal activity of a broker-dealer in carrying out trades for customers and offsetting the resulting risks on its own books—in today's financial markets."). 33 See U.S. Department of the Treasury Report, A Financial System that Creates Economic Opportunities: Banks and Credit Unions (2017) at 75, 132. OCC Legislative and Regulatory Activities Division September 21, 2017 Page 13 of 14 consequences through FAQs and other processes. We understand that a complex statute such as the Volcker Rule presents inherent challenges. Nor do we mean to minimize the difficulties of not only interpreting this statute but also seeking to do so in a coordinated manner among five rulemaking bodies, each with its own congressional mandate and interpretive approach. In our experience, however, the Agencies' efforts at addressing regulatory issues have been opaque and cumbersome and, in some cases, too prolonged to provide the timely certainty that our members (and other market participants) need to plan and run their regulated businesses. The relief we sought with respect to the seeding issues that many of our members face, discussed above, is illustrative. As we noted, the release of key guidance in FAQ 16 came only days before the July 2015 compliance date. The FAQ followed months, if not years, of stakeholders writing to and meeting with staff of the Agencies, without any clear indication as to the staff's thinking, progress, or deliberations. Many commentators, including some who were involved in implementing the Volcker Rule, have described the Final Rule as overly complex and vague, a result that we believe can partly be attributed to the coordination challenges faced by the Agencies.34 We urge the OCC and the other Agencies to consider changes to improve the administration of the Final Rule going forward. * * * * We appreciate this opportunity to share our views regarding needed improvements to the Final Rule. While we have focused in this letter on issues of greatest concern to our membership, we recognize that there are other areas in which the Final Rule may be overly broad or complex. We therefore urge the OCC and the other Agencies to consider carefully the range of comments received in response to this notice, and to work together to reduce unnecessary overbreadth and complexity in the Final Rule. 34 See, e.g., Daniel K. Tarullo, Governor of the Federal Reserve System, Departing Thoughts at the Woodrow Wilson School, Princeton University (April 4, 2017) ("several years of experience have convinced me that there is merit in the contention of many firms that, as it has been drafted and implemented, the Volcker rule is too complicated. Achieving compliance under the current approach would consume too many supervisory, as well as bank, resources relative to the implementation and oversight of other prudential standards."). OCC Legislative and Regulatory Activities Division September 21, 2017 Page 14 of 14 If you have any questions regarding our comments or would like additional information, please contact me at (202) 326-5901 or paul.stevens@ici.org; Susan Olson, Chief Counsel, ICI Global, at (202) 326-5813 or susan.olson@iciglobal.org; or Rachel Graham, Associate General Counsel, ICI, at (202)-326-5819 or rgraham@ici.org. Sincerely, /s/ Paul Schott Stevens Paul Schott Stevens President & CEO Investment Company Institute

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