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February 13, 2012

Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20520

Office of the Comptroller of the
Currency
250 E Street, SW
Washington, DC 20219

Commodity Futures Trading
Commission
1155 21st Street NW
Washington, DC 20581

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Joint Notice of Proposed Rulemaking Implementing
the Volcker Rule: Federal Reserve Docket No. R-1432
and RIN 7100 AD 82; OCC Docket ID OCC-2011-14;
FDIC RIN 3064-AD85; SEC File No. S7-41-11; CFTC
RIN 3038-AC

Ladies and Gentlemen:

This Firm appreciates the opportunity to comment on the joint notice of proposed rulemaking¹ implementing Section 619 of the Dodd-Frank Wall Street

¹ 76 Fed. Reg. 68,846 (Nov. 7, 2011) (the "Proposal"). In this letter, we refer to the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission (the "CFTC") collectively as the "Agencies", the text of the proposed rules as the "Proposed Rule", and the final regulations the Agencies plan to issue to implement the Volcker Rule as the "Final Rule". We

Reform and Consumer Protection Act ("Dodd-Frank"),² commonly known as the "Volcker Rule". The purpose of this comment letter is to alert the Agencies to an unintended consequence under the Proposed Rule that, if not addressed in the Final Rule, could effectively prohibit a bank holding company from retaining an ownership interest in another bank holding company in certain circumstances.

The Volcker Rule, among other things, generally prohibits a banking entity, including a bank holding company, from sponsoring, or acquiring or retaining an ownership interest in, a "private equity fund" or a "hedge fund" ("covered funds"), subject to certain exemptions.³ The Proposed Rule implements this prohibition at § __.10(a), which provides that "a covered banking entity may not, as principal, directly or indirectly, acquire or retain any ownership interest in or sponsor a covered fund[,]" unless an exemption is available.⁴ The primary exemption is an eight-factor "permitted funds" exemption.⁵ There is also an exemption that allows a banking entity to own certain specified types of entities, including joint venture operating companies, acquisition vehicles, and wholly-owned liquidity management subsidiaries carried on the balance sheet of the banking entity.⁶

This general prohibition could have unfortunate and, we believe, unintended consequences for any bank holding company that holds an interest in another bank holding company that meets the definition of a "covered fund."⁷ Specifically, under the Proposed Rule, a bank holding company would be prohibited

note that the CFTC's version of the Proposed Rule has not yet been published in the Federal Register.

² Codified as new Section 13 of the Bank Holding Company Act of 1956 (the "BHC Act"), 12 U.S.C. § 1851.

³ BHC Act § 13(a)(1).

⁴ Proposed Rule at § __.10(a).

⁵ Proposed Rule at § __.11(a)-(h). There are other exemptions, including for risk-mitigating hedging activities, certain non-U.S. activities conducted by non-U.S. banking entities, and loan securitization vehicles. Proposed Rule at § __.13.

⁶ Proposed Rule at § __.14(a)(2).

⁷ Under the Proposed Rule, a "covered fund" is defined to include any issuer that relies on the section 3(c)(1) or 3(c)(7) exclusions from the definition of investment company under the Investment Company Act of 1940, a commodity pool, certain foreign equivalents, and any similar funds as may be determined by the Agencies. Proposed Rule at § __.10(b)(1).

from retaining an ownership interest in any bank holding company to the extent that the other bank holding company was a "covered fund," unless an exemption was available.⁸ The Proposed Rule does not contain an exemption that would expressly authorize a bank holding company to hold such an interest in another bank holding company.⁹

We do not believe that the Congress intended for the Volcker Rule to prohibit an investment by a bank holding company in another bank holding company, even in cases where the other bank holding company might otherwise be treated as a "covered fund". If such a prohibition were allowed to apply to these kinds of investments, it would result in bank holding companies being required to alter their corporate and organizational structures without, in our view, achieving any reduction in risk. Moreover, bank holding company investments in other bank holding companies do not in our view raise the type of concerns which the Volcker Rule was intended to address.

Section 619(d)(1)(J) of Dodd-Frank grants the Agencies broad authority to authorize certain activities that might otherwise be prohibited by the Volcker Rule to the extent that such activities promote and protect the safety and soundness of a banking entity and the financial stability of the United States.¹⁰ We respectfully request that the Agencies rely on this authority to include in the Final Rule a provision that would expressly exempt from the general prohibition at § __.10(a) investments made by a banking entity in a bank holding company.

⁸ The Proposed Rule would also prohibit a bank holding company from forming a subsidiary bank holding company in the context of a corporate reorganization if the subsidiary bank holding company met the definition of a "covered fund," absent an exemption. Under the Federal Reserve's Regulation Y, such formations are generally authorized without prior approval of the Federal Reserve provided certain conditions are met.

⁹ Moreover, the "permitted funds" exemption could not be relied upon as a practical matter because its restrictions on the banking entity's ability to support the covered fund would limit the extent to which a parent bank holding company could serve as a source of strength to a lower tier bank subsidiary.

¹⁰ BHC Act § 13(d)(1)(J).

To implement such an exemption, we would recommend that the Agencies consider including in the Final Rule a new subsection (vi) at § __.14(a)(2), as follows:

§ __.14 Covered fund activities determined to be permissible.

(a) The prohibition contained in § __.10(a) does not apply to the acquisition or retention by a covered banking entity of any ownership interest in or acting as sponsor to:

...

(2) Certain other covered funds. Any of the following entities that would otherwise qualify as a covered fund:

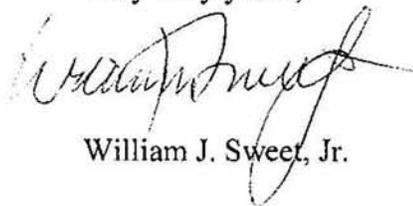
...

(vi) A bank holding company as defined under section 2(a)(1) of the Bank Holding Company Act of 1956, as amended [12 U.S.C. § 1841(a)(1)].

* * *

We appreciate your consideration of our comment on the Proposed Rule. Please contact me or John Court (202-371-7048) if we can answer any questions or provide any additional information.

Very truly yours,



William J. Sweet, Jr.