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Comments on *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*

Japanese Bankers Association

The Japanese Bankers Association ("JBA") appreciates the opportunity to comment on *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds* published on June 5, 2018, by five U.S. agencies (the Federal Reserve Board ("FRB"), the Commodity Futures Trading Commission Office ("CFTC"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Securities and Exchange Commission ("SEC") (collectively the "Agencies").

We respectfully expect that the following comments will contribute to your further discussion.

[Executive Summary]

We understand that the proposed amendments are the result of due consideration of concerns raised by financial institutions whilst implementing the Volcker Rule as well as of existing business practices and procedures. We support the Agencies' efforts to provide greater clarity and to reduce financial institutions' burdens to address the requirements, and regard the proposals as a significant step forward for establishing a more effective framework for the Volcker Rule.

On the other hand, we would like to note that, despite Agencies' intention, some of the proposed amendments may incur additional burdens on financial institutions as they present additional requirements, which financial institutions will be obligated to comply with. We therefore ask that the Agencies give due consideration to our comments provided herein and finalize the proposed amendments based on our suggestions. In the case of the Agencies' decision to not implement our suggestions, we ask that the Agencies provide reasonable lead time for financial institutions to undertake actions to comply with the amendments.

Furthermore, although we have shared its comments and concerned with the Agencies several times, some of it has still remained unresolved, such as the excessive extraterritorial application of the Volcker Rule and an issue related to certain funds being deemed as banking entities ("BEs").

If the Agencies continue their efforts in simplifying the existing Volcker Rule and if all the concerns mentioned below are considered and addressed, we believe that Volcker Rule's unintended negative impacts on the soundness and organization structure of non-U.S. financial institutions will be mitigated and the possibility that the unilateral national regulation may undermine the stability of the entire financial system will be reduced. Furthermore, we believe that if excessive restrictions and prohibitions under the current rules are reduced through such efforts, banking entities can continue to demonstrate their appropriate financial intermediary function.

The modification of extraterritorial application of the Volcker Rule should be discussed in terms of its impacts on the soundness of the U.S. financial system and should not be discussed from a perspective of competitive advantages and disadvantages between U.S. banking entities and non-U.S. banking entities. Non-U.S. banking entities should be able to appropriately conduct operations under the supervision of their home agencies to the extent that they do not affect the soundness of the U.S. financial system, and hence we respectfully expect that the excessive extraterritorial application will be further corrected.

Furthermore, the proposed amendments should be finalized in a manner not to cause any contradictions and inconsistencies with international regulatory frameworks, such as the Basel III requirements (including the fundamental review of the trading book ("FRTB")) and initiatives within the U.S., such as the U.S. Treasury's Report published in June 2017.

The below are our detailed comments on some of the proposed amendments to the Volcker Rule Regulations.

1. Scope of banking entities

(1) Scope of BEs

Subsidiaries that do not engage in trading activities in the U.S. should be excluded from the scope of BEs and non-consolidated affiliates should also be excluded from the scope of BEs.

The primary objective of the Volcker Rule is to "maintain the soundness and safety of the financial system in the United States." However, the majority of BEs subject to the Volcker Rule within Japanese banking groups are located outside the U.S., and many of them do not engage in trading activities in the U.S. Accordingly, they do not have impacts on the above-mentioned purpose.

If these entities would be included in the scope, a simplified individual firm level compliance program should be applied to subsidiaries that do not engage in trading activities in the U.S. or non-consolidated affiliates.

(2) Classification approach for BEs

① Definition of trading assets and liabilities (Q3-7)

The definition of trading assets and liabilities, which is a criterion set out in the proposed amendments to classify BEs, should be clarified. This is because, while trading assets and liabilities are significant concepts, the proposed rules do not provide their definition. Once the definition is clarified, then, for aggregating trading assets and liabilities, non-U.S. banking entities should be allowed to do so in accordance with accounting standards established at the home jurisdiction applied in preparing their consolidated financial statements.

② Scope of calculation for trading assets and liabilities

For the thresholds used for the three-tiered BE classification for non-U.S. banking entities, trading assets and liabilities of the U.S. operations should be uniformly used in light of determining impact on U.S. market. In addition, non-consolidated affiliates should be excluded from the scope of calculation. In this regard, for non-consolidated affiliates, the necessity to continuously track positions of trading assets and liabilities may cause significant practical burdens. Given that a firm can only exercise limited control over its non-consolidated affiliate(s), the concern that the firm may evade the statute using its affiliate(s) as assumed by the Volcker Rule is considered to be low. Therefore, including trading assets and liabilities of non-consolidated affiliates in the determination using the thresholds would not be warranted.

③ Level of threshold

For “banking entities with significant trading assets and liabilities,” the threshold set at $10 billion or more of trading assets and liabilities would be a heavy requirement for certain non-U.S. banking entities. Non-U.S. financial institutions are generally subject to enhanced regulations established by their home agencies, and hence would be subject to overlapping regulations. Therefore, such banks should, in particular, be given due consideration. If non-U.S. banking entities will be subject to the enhanced regulations in the U.S., we suggest that the Agencies consider raising the threshold for “banking entities with significant trading assets and liabilities” higher than $10 billion.

(3) Applicable compliance program based on the trading assets and liabilities of BEs (Q3-7)

"Banking entities with limited trading assets and liabilities" should be clearly excluded from the scope of the Volcker Rule, rather than be permitted rebuttable presumption of compliance with the Volcker Rule. Even if rebuttable presumption is granted by the proposed amendments, this does not lead to a reduction in regulatory costs of financial institutions and thus does not conform to the purpose of this regulatory review, because this will necessitate the establishment of an internal control to ensure thorough compliance in order for financial institutions to comply with applicable laws and regulations. Rather, this gives rise to a concern that regulatory costs may differ between financial institutions that determine that they "will not establish a control until the Agencies rebut such presumption" (i.e., financial institutions with high risk tolerance) and those that do not make such a decision. To address this, financial institutions with lower risks should be clearly excluded from the scope of the Volcker Rule.

(4) Treatment of funds not subject to the Volcker Rule (Q12)

We suggest that the Agencies permanently clarify that foreign excluded funds ("FEFs") are excluded from the scope of BEs.

The extraterritorial application of the Volcker Rule is extremely extensive, goes beyond the purposes of the enactment of the laws and regulations, and also imposes excessive restrictions and burdens on non-U.S. banking entities. Consequently, we have suggested “that the Rule be clarified so as to ensure that the funds owned by non-U.S. BEs, that are organized and offered exclusively outside of the United States and that do not otherwise qualify as “covered funds” are not deemed to be BEs by virtue of the non-U.S. BEs’ investment in or governance arrangements with the fund."[1]

FEFs are funds established outside the U.S. and are managed in accordance with the regulations and systems established at respective jurisdictions. In this regard, funds that are subject to the Volcker Rule is designed with funds established in the U.S. in mind and hence there are some cases where the requirements are not appropriate to the nature of FEFs.[2]

Furthermore, since the treatment of FEFs and the scope of BEs are ambiguous, investments in FEFs through the asset management business are currently addressed by applying conservative treatment by referring to requirements of covered funds and other similar requirements.

Thus, FEFs, that are not subject to the Volcker Rule, should be managed in accordance with the systems established at respective jurisdictions and should be permanently clarified to be excluded from the scope of BEs.

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[1] "Requests related to the Volcker Rule" dated November 20, 2014 (Addressees: FRB, OCC, SEC, CFTC and FDIC),
"Requests related to the Volcker Rule" dated May 21, 2015 (the same addressees as above),
"Requests related to the Volcker Rule" dated March 7, 2016 (the same addressees as above),,
See "Comments on *Notice Seeking Public Input on the Volcker Rule* issued by the Office of the Comptroller of the Currency" dated September 21, 2017 (Addressee: OCC).

[2] For example, there is a concern that a fund may be deemed as a BE under the concept of "control" if BE holds certain interests in the fund. However, the concept of control through ownership interests is not relevant because there is no voting right in a contract-type investment trust, which accounts for the majority of Japanese funds.

The U.S. Treasury Report published in June 2017 clearly recommends that the Agencies should exclude FEFs from the definition of BEs. In light of this, treatment of FEFs should be clarified.

Additionally, funds that are excluded from the definition of covered fund (e.g. foreign public funds) are deemed to be investments that do not have an impact on the regulatory objectives of the Volcker Rule. Therefore, it should be clarified that these funds are excluded from the scope of BEs.

2. Proprietary trading

(1) Definition of trading account (Q23-Q38)

Since we believe that the market risk capital prong allows banking entities to determine which positions are in scope of the trading account, we support the Agencies' proposal to remove the short-term intent prong.

On the other hand, we believe the introduction of accounting prong is unnecessary as the market risk capital prong will also be applied to foreign banking entities under the proposal. If the accounting prong is introduced, we suggest that the Agencies change the definition of accounting prong or expand the scope of excluded activities because the scope of the trading account will be significantly expanded.

While the accounting prong is considered to be a clear criterion, it encompasses both the market risk capital prong and dealer prong, and hence this would lead to the expansion of the scope of the trading account compared to the current definition.

Transactions which may be added to the scope include derivatives transactions (e.g., swaps for funding purposes and loan-related swaps) and cash transactions (e.g., securities held for asset-liability management ("ALM") purposes in the banking book). Consequently, transactions which are conducted for non-trading purposes and are not intended to be covered under the Volcker Rule will also be included in the scope under the proposed requirement.

There is also a concern that, if activities which have been previously excluded as mentioned above, are defined as trading accounts, substantial additional compliance burdens may be imposed on foreign banking entities.

Given these considerations, financial instruments should not be included in the scope of the trading account merely because these are recorded at fair value. In the case of our suggestion discussed above not being accepted, safe harbors[3] should be provided allowing to exclude certain transactions from the definition of trading account in order to prevent transactions for positions which are not held for trading purposes from being

[3] Examples of safe harbors include ① positions held period of 60 days or longer, ② positions held in the banking book, such as available-for-sale securities, and ③ positions to which hedge accounting is applied under accounting standards established at the home jurisdiction.

limited.

(2) “Reasonably expected near term demand (“RENTD”)” requirement related to market-making (“MM”) and underwriting activities (Q64-Q77)

We support the proposed “presumption of compliance” approach that permits banking entities to rely on their internal risk limits in order to be compliant with the statutory RENTD requirements, instead of applying the RENTD measurement requirements.

On the other hand, the proposed requirement to report to the appropriate Authorities if a limit is exceeded or increased will cause an extremely high burden. Financial institutions have already implemented the required escalation and recordkeeping procedures in regards to actions to be taken in the event of exceeding or increasing risk limits. Additionally competent authorities have already established a framework where they can promptly recognize whether a limit is exceeded or increased using metrics reporting. Therefore, reporting to the appropriate Authorities in the event of exceeding or increasing a limit, which is currently being proposed, will create unnecessary costs and for this reason should not be included in the rules.

If reporting is deemed required, it is important to provide a clarification on which levels of internal limits are subject to reporting as well as detailed required processes for setting these limits, since are various internal limits, which are currently established within a BE.

(3) Amendments to the TOTUS[4] exemption (Q123-Q130)

Applying current TOTUS exemption, as a result, has very strictly restricted transactions between non-U.S. banking entities and U.S. banking entities, we believe that this has been one of causes of deteriorating liquidity in the U.S. market. We support the Agencies’ proposal to remove the financing and counterparty prongs in order to improve latitude in business and reduce burden to establish and implement control procedures. Although this review would significantly improve liquidity in the U.S. market, it is expected that non-U.S. banking entities will continue to incur operational burden to certain extent since the legal entity requirements will be retained.

In this regard, primarily, no specific prohibitions should be imposed on foreign transactions, and foreign transactions by non-U.S. banking entities should be treated as one of excluded transactions. Furthermore, since the proposed amendments retain the legal entity requirements (i.e., the BE (including relevant personnel), engaging as

[4] the “trading outside the U.S.” (“TOTUS”) exemption (the Bank Holding Company Act of 1956 (the “BHC Act”) § 13(d)(1)(H) as implemented in Section_.6(e) of the 2013 Rule)

principal in the purchase or sale is not located in the U.S.; and the purchase or sale is not accounted for as principal directly or on a consolidated basis in the U.S.), it remains unclear whether inter affiliate transactions with subsidiaries and affiliates located in the U.S. and intra-bank transactions with branches located in the U.S. are permitted. Such inter-affiliate or intra-bank transactions are, in substance, equivalent to directly conducting transactions with the U.S. bank by non-U.S. banking entities. Accordingly, we suggest that such inter-affiliate or intra-bank transactions be clearly permitted.

In addition, in the proposed amendments, while the "arrangement, negotiation and execution (“ANE”)" requirement for transactions is eliminated, only the arrangement and negotiation are mentioned as examples of limited involvement which is not deemed to be engaging in, the execution is not referred to. We suggest that the Agencies add the execution or at least provide examples for the clarification purpose.

Furthermore, we believe that “the decision to purchase or sell” means a decision-making on matters that may lead to major risks associated with a transaction, therefore we suggest that the Agencies exclude those executions of transactions made by an U.S. resident from the scope, based on an extremely limited discretion.

(4) Exclusion of loan-related swaps (Q101-Q107)

Loan-related swaps are, in principle, held until the maturity of underlying loans and are not for trading purposes and should therefore be excluded from the definition of trading account. Financial institutions would incur higher operational burdens if swaps related to loans are classified as market-making activities.

3. Fund investments

(1) Definition of covered funds (Q131)

If a characteristics-based approach will be applied to the definition of a covered fund, these characteristics should be limited to those that are easy to assess based on the apparent criteria in order to reduce an assessment burden.

Under the current definition of covered fund, funds that do not possess the characteristics of hedge funds and private equity (“PE”) funds that are originally intended to be subject to the Volcker Rule are also included in the scope. As a consequence, the involvement of foreign bank-affiliated asset management companies located in the U.S. is limited, and healthy competitive environment in the asset management business has been inhibited. Therefore, a simple approach to assess whether a hedge fund or PE fund has a typical risk appetite characteristic based on the apparent criteria (e.g., whether a performance fee is charged) should be applied. If a fund does not have such characteristics, it should be excluded from the definition of covered fund.

There is however a potential concern that the fund might become a BE as a result of its exclusion from the definition of covered fund. Therefore prior to making a decision to change the definition of covered fund, we suggest that the Agencies appropriately review the scope of BEs by considering our comments described in 1.(4) above.

In addition, since transactions, which are subject to the rules differ before and after the amendments, current holdings may be deemed to be prohibited activities once the amendments are implemented. Therefore, with respect to transactions that are not subject to the rules under the 2013 final rule, but are subject to the rules under the proposed amendments, transitional measures should be provided in order to comply with the amendments. If existing holdings are not going to be allowed to be continuously held, it will become necessary to sell them before the rules are applied. This may affect business operation before and after implementing the amendments to the Volcker Rule. Therefore, introducing this requirement may have a considerable impact on the market.

(2) Treatment of foreign public funds (Q145-Q151)

With regard to the interpretation of "sold predominantly through one or more public offerings outside of the United States", which is a requirement for foreign public funds, the requirement related to the percentage of an offering to U.S. resident should be eliminated despite the Preamble's interpretation, that this is not applicable only when the percentage of an offering to U.S. residents is 15% or less.

Given the difficulty of accurately identifying the location of a purchaser of interests of public funds and the possibility of unintended sales to U.S. residents, the requirement on the percentage of an offering of foreign public funds' interests to U.S. residents should be removed. If the complete removal is not possible, the percentage should be raised to a reasonable level.

Furthermore, since especially Foreign ETFs and REITs are permitted to be held by retail investors and hence are apparently not deemed as a hedge fund or a PE fund that are intended to be subject to the Volcker Rule, they should uniformly be deemed foreign public funds which are excluded from the definition of covered fund, regardless of the percentage of an offering of foreign public funds' interests to U.S. residents.

It is impracticable to track U.S. investors and non-home jurisdiction investors' ownership interests in listed instruments. In addition, establishing uniform regulatory requirements that do not take into account situations of non-U.S. jurisdictions would unnecessary have a negative impact on the stability of non-U.S. financial markets and increase unnecessary regulatory burdens.

(3) Amendments to the SOTUS[5] Exemption (Q191-Q193)

We support the proposed elimination of the financing prong related to the SOTUS exemption as such elimination will increase the clarity of the Volcker Rule.

We understand that the amendments to SOTUS exemption have incorporated specific marketing restriction, which is clarified by FAQ13 and which is related to the Volcker Rule and that the requirements for offerings and sale to U.S. residents have been clarified. On the other hand, marketing restriction related to SOTUS exemption should be construed as prohibiting financial institutions from selling to U.S. residents, as per current regulation, and this should not be extended to funds managed by third parties (third-party funds).

If the scope of marketing restrictions were to be extended in order to cover third-party funds, then it would be significantly restricted for foreign banking entities to rely on SOTUS exemption, and as a consequence current regulations would be overly stringent because financial institutions do not have any means to restrict the third-party's sales activity. This significantly lacks balance between the objective of review to reduce regulatory burden, and significant restrictions imposed on the investment activities of foreign banking entities.

(4) Treatment of loan securitization (Q176-Q178)

With regard to the exclusion of loan securitization, since the scope of permitted underlying assets (other than loans) under the current rule is too narrow, we suggest that the Agencies allow the inclusion of other assets to the extent that the product nature and risk profile of the loan securitization do not vary significantly.

(5) Fund's seeding period (Q14)

The 3-year period of a seeding period defined under the current rule is one of guideline. However, under certain conditions,[6] a seeding period of more than three years should be permitted provided that a seed investment is made for the purpose of a bona fide asset management business.

Asset management firms develop various products to meet investors' needs. In evaluation of new products, their actual track record is the most significant factor. Also, investors often assess track record when making investments. Asset management firms have used their own or their group's funds to make seed investments to create such track

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[5] the "solely outside the U.S." ("SOTUS") exemption (the BHC Act § 13(d)(1)(I) as implemented in Section _.13(b) of the 2013 Rule)

[6] Such conditions would include the development of a sale and collection plans and conducting periodic reviews.

records. However, such activities are constrained by the Volcker Rule. While full-scale marketing is initiated after the three-year seeding period, investment decisions are made in light of external environment and other factors. Given these considerations, a seeding period should not be set explicitly, and each asset management company should be allowed to reasonably determine the period by themselves instead. In addition, we suggest that the Agencies clarify that FEFs are treated in the same manner as above-mentioned treatment. As described in 1.(4) above, we also suggest that the Agencies clarify that FEFs are not uniformly deemed as a BE, including during a seeding period.

4. Compliance program

(1) Simplification of compliance program (Q214)

As we have been suggesting the review of the excessive extraterritorial application several times previously, we welcome the proposed elimination of Appendix B that stipulates detailed approval and effectiveness assessment processes for a compliance program because this decision is in line with the governance framework, which is set forth in laws and regulations and customs established at respective jurisdictions.

We also agree with the proposal to apply a simplified compliance program to banking entities with moderate trading assets and liabilities and to reduce compliance burden associated with market-making and hedging activities.

On the other hand, since the proposed amendments do not set forth the details of compliance program including the definition, we suggest that more detailed information be provided in the final version.

Although the JBA and Japanese banks have made inquiries for uncertain areas and proposed improvements regarding the Rule to date, we could not obtain any specific responses in many cases since coordination between the five agencies is necessary. Furthermore, pursuing effective regulation with consideration of risk-based factors and business activities within the U.S. as previously mentioned, would be supported by the establishment of an appropriate communication channel among Agencies, covered financial institutions and relevant industry groups. Otherwise, it is necessary to make the segregation of the roles more clearly (e.g. formulation of regulatory policy, enforcement of the regulation and the point of contact for inquiries) among the Agencies.

(2) Compliance requirements for banking entities with moderate trading assets and liabilities (Q211)

Banking entities with moderate trading assets and liabilities should also be excluded from the compliance program requirements (the CEO attestation, independent testing, training, and recordkeeping provisions).

We understand that the purpose of the Proposal is to reduce excessive regulatory compliance burden on financial institutions. However, a difference between the first tier category (significant) and the second tier category (moderate) of compliance program requirements is so mere, that we suggest it to be reconsidered, whether the development of a separate compliance program is required. Proposed amendments will not lead to a significant reduction in regulatory compliance burdens for financial institutions classified as "moderate." Given that financial institutions classified as "moderate" are also required to appropriately comply with the Volcker Rule in their existing compliance program, requirements such as the CEO attestation, independent testing, training and recordkeeping need not be imposed on such banking entities.

(3) CEO attestation (Q213)

The CEO attestation requirement will particularly impose burden on those who are not currently obliged to make the CEO attestation. Therefore, we oppose the expansion of the scope of banking entities subject to the CEO attestation.

Banking entities, which a basic compliance program is applied to and which are currently not subject to the CEO attestation have been monitoring the level of compliance as part of establishing their system of internal controls since the current Volcker Rule has become effective, and have been conducting independent testing, audits and other similar activities. If the CEO attestation becomes a requirement, these banking entities will incur additional burden due to the need development and implementation of a new framework. Accordingly, banking entities to which the basic program is applied should be allowed to take the same approach as currently being required, such as establishing a framework to monitor the level of compliance with applicable rules and conducting internal audit.

To avoid an excessive extraterritorial application with respect to non-U.S. banking entities, the scope of attestation should be limited to U.S. operations, regardless of whether they have already been subject to the CEO attestation requirement previously.

(4) Metrics reporting requirements

The proposed amendments have revised the metrics reporting requirements and additionally set forth new requirements, including the preparation of the Trading Desk Information and submission of a Narrative Statement. While details of development costs are unclear at present, such requirements will additionally incur burden and costs related to a development of systems and an improvement of measurement systems. Given this, we strongly suggest considering the following comments.

① Changes in reporting formats (Q249)

We disagree with the proposal to change the scope of calculation items and reporting formats because such changes would necessitate changes in a current calculation system, and thereby increase costs.

② Clarification of reporting metrics (Q220-Q233)

The proposed amendments related to metrics reporting requirements would be burdensome. If the purpose of the amendments to the Customer-Facing Activity Measurements is to resolve the "difficulty in understanding metrics," such purpose can be met by reporting underlying data of the existing metrics. We therefore suggest that the Agencies avoid introducing a new measurement definition as this would necessitate additional systems development.

③ Less-significant metrics (Q228- Q229)

We agree with the proposal to describe the nature of main activities for the Trading Desk Information. However, we suggest that the Agencies not mandate reporting of metrics which are considered unnecessary or insignificant in terms of the nature of their business[7], and allow to describing them in the Trading Desk Information instead.

④ FRTB (Fundamental review of the trading book) (Q257- Q259)

We understand that there are still open FRTB issues related to the classification of the banking book and trading book which have yet to reach a conclusion. We ask that the Agencies understand that, if new items will be recognized as the trading book, new systems will become necessary to be developed and, since it will be impossible to address the new requirements immediately, banking entities will need a preparation period once these requirements have become effective.

Since there is a concern that a definition may differ between exposures measured under the FRTB and exposures arising from actual transactions in the trading book, we suggest that the Agencies limit the scope of exposures arising from actual transactions in the trading book.

[7] For example, because a desk that trades only FX spot and futures contracts does not hold securities, the inventory period for the securities is always zero. Whereas a desk with a large amount of transactions compared to the limit can review compliance with permitted activity requirements only through limit monitoring.

(Scope of the definition of BE: Q3-Q18)

Q3: Would the general approach of the proposal to establish different requirements for banking entities based on thresholds of trading assets and liabilities be appropriate?

- While trading assets and liabilities are significant financial instruments, these are not clearly defined. Therefore, the Agencies should firstly provide the definitions of these items.
- In regards to aggregation of trading assets and liabilities, non-U.S. banking entities should be allowed to comply with accounting standards, which are applied when preparing their consolidated financial statements (i.e. to apply §__.2(b) of the proposed rules mutatis mutandis).

Q12: Have commenters experienced disruptions to bona fide asset management activities involving RICs, FPFs, and foreign excluded funds as a result of the interaction between the statute's and the 2013 final rule's definitions of the terms "banking entity" and "covered fund?"

- We would like to express our gratitude for the one-year No-Action Relief for certain foreign funds announced in a policy statement issued on July 21, 2017 by the FRB, the FDIC, and the OCC ("Policy Statement") and also for relevant coordination and other efforts between the Agencies made towards the announcement of the No-Action Relief.
- However, the 2013 final rule caused serious effects on investments in foreign funds which do not have any impact on the U.S. markets due to lack of specific guidance and stipulation that FEFs are not BEs. This has forced banking entities to generally take conservative approaches (e.g. reducing interests in investees which are not even consolidated for investment and financial purposes) and to limit their investments in foreign funds that are based on bona fide asset management activities. As a consequence, the overall fund business was seriously affected.
- Furthermore, since it had not been clarified whether FEFs should or should not be treated as a BE by the deadline on July 21, 2018, some entities are relying on the TOTUS Exemption for those funds that may be deemed as BEs in order to comply with the proprietary trading requirements. Even under the current situation, since the guidance is time-limited, the implementation of the Volker Rule has yet to become stable. In this view, FEFs should be excluded from the scope of BE permanently.
- The Volcker Rule's regulation on investments in covered funds prohibits direct investments in the covered fund but does not regulate investments made by the covered fund (i.e. indirect investments from the view point of the investor of the covered fund). However, once a fund in which the investor invests in, is determined to be a BE, the fund is required to establish a compliance program and its investments will be regulated under the Volcker Rule. This would mean that

consequently the Volcker Rule is regulating indirect investments as well, which gives rise to a concern that the scope of the regulation is overly expanded.

- On the other hand, non-U.S. banks are allowed to engage in investments in covered funds referred to in the previous paragraph by relying on the SOTUS Exemption, in which case the fund is not treated as a BE. This would mean that consequently both direct and indirect investments will be permitted. Therefore, it is difficult to understand the objective of this requirement.
- "Ownership interest", which was defined in the 2013 final rule, significantly expanded the concept of the holding of funds. As a result, those funds in which an entity does not have control under the legislation and business practice different from those of U.S., are deemed as controlled by the entity under the 2013 final rule. This is imposing practical difficulties for regulatory compliance.

Q13: Has the guidance provided by the staffs of the Agencies' and the Federal banking agencies discussed above been effective in allowing banking entities to engage in asset management activities, consistent with the restrictions and requirements of section 13?

- Contract-type investment trusts offered as part of asset management activities in Japan, do not issue securities that correspond to the concept of the voting right under the BHC Act and are managed based on the investment policy specified in the trust contract entered into between the settlor and trustee and thus are not controlled by the investor. Given this, at least those funds, that are offered as part of asset management activities in our jurisdictions should be expressly excluded from the definition of a BE. Based on this, naturally, the seed investment conducted as part of asset management activities should also be allowed.
- Even if the above suggestions are not accepted, such fund should not be deemed as a BE even where an entity accounts for the majority of the fund's board of directors. This is because the purpose of sending directors to the fund is, in many cases, to provide administrative support as part of asset management activities and not to control the fund, and therefore, in substance, the entity does not have control over the fund even in such circumstances.

Q15: Are there other situations not addressed by the staffs' guidance for RICs and FPFs that may result in a banking entity sponsor's investment in the fund exceeding 25 percent, and that limit banking entities' ability to engage in asset management activities?

- Foreign funds that are managed pursuant to national regulations and systems in respective jurisdictions should be excluded from the "BE" definition irrespective of the investment ratio.
- Securities companies in many occasions temporarily hold a large lot of public funds

distributed in markets, such as ETF and REIT, as part of their brokerage activities in the exchange (e.g. market-making, block trades, and underwriting), and therefore are assumed to exceed the investment ratio of 25% in some cases. To avoid such a situation, securities companies may have to dispose of their interests in those public funds in which they invest. Otherwise, their investment ratio may increase as a result of other investors' terminations, which have actually occurred. From the perspective of investor protection, the Agencies should avoid those cases where entities recover their cash in order to prevent their investee funds from falling within the "BE" definition and thereby resulting in a redemption of such funds.

- In the first place, the investment policy and the product nature of ETF and REIT are specified and the trustors undertake management activities in compliance with such a policy, etc. Given this, even if a single investor's interest ratio increases, the investor will not have control as defined under the BHC Act. This is particularly true for those brokers, who temporarily holding public funds as part of their business. Considering this, public funds distributed in markets such as ETF and REIT should be excluded from the "BE" definition.

Q16: Have foreign excluded funds been able to effectively rely on the policy statement to continue their asset management activities?

- We suggest that the Agencies exclude FEFs that are sponsored by an asset management company which is a bank's subsidiary from the "BE" definition. This is important in order to ensure fair competition between an asset management company which is a bank's subsidiary and an asset management company which is a subsidiary of a non-bank company.
- The determination of the "BE" status based on the existence of control should be modified. As described in the Executive Summary, if an entity is being assessed, whether they have control, based on the threshold of holding no less than 25% of voting securities, uncontrollable affiliates may also be included in the BE definition.
- With respect to contract-type investment trusts, which are primary investment targets for Japanese banks, under the Japanese legislation investors have no control of such funds; contrary to the U.S. statute which recognizes such funds as being controlled by investors. There is a significant negative extraterritorial impact in regards to applying control requirements under the U.S. BHC Act to those foreign funds that are established and organized in accordance with the control standard under national banking regulations in respective jurisdictions
- According to the Policy Statement, the definition of "bona fide asset management business" is unclear. Therefore, in practice, based on the context of the Policy Statement, this is interpreted as the business where the qualifying foreign excluded fund ("QFEF") engages in and does not violate applicable laws and regulations. By

the expression “violate applicable laws and regulations,” we mean, for example, concealing fraudulent activities and evading applicable laws and regulations, and do not mean activities that would be permitted if certain conditions are applied. If the above interpretation is inconsistent with the Agencies’ intent, we suggest that a clear definition for “bona fide asset management business” would be provided.

- Regardless of whether QFEF requirements are satisfied or not, public funds and ETFs that meet all of the following conditions should be exempted from the Volcker Rule application and therefore excluded from the “BE” definition because banks will not be able to control such funds’ investment activities.
  - ✓ Privately placed funds[6]
    - ① The fund is organized or established outside the U.S. and is offered or sold solely outside the U.S.
    - ② If the fund is deemed to be a covered fund, the non-U.S. bank, that has ownership interest in this fund, may apply the SOTUS Exemption.
  - ✓ ETFs[7]
    - ① The fund is operated outside the U.S. and does not rely on the U.S. laws.
    - ② The administrator of the fund is independent from the non U.S. bank.
    - ③ The non-U.S. bank is not involved in the fund administrator’s investment activities.

Q17: The Agencies are extending the application of the policy statement with respect to qualifying foreign excluded funds for an additional year to accommodate the pendency of the proposal. The Agencies are requesting comment on other approaches that the Agencies could take to address these issues, consistent with the requirements of section 13 of the BHC Act.

- In our response to Q16, we suggested that foreign funds would be excluded from the “BE” definition. In addition, the Agencies should permit banking entities to flexibly determine the seeding period according to actual circumstances in respective jurisdictions. Although foreign funds by their nature do not contradict the objective of the Volcker Rule, financial institutions may hesitate to seed such a fund out of concern that these funds may be deemed as BE funds, which is undermining the sound development of business in foreign countries. In light of the objectives of the regulation (i.e. to avoid conflict of interests, restrain a high-risk asset or a high-risk

[6] The reason for not including “there is no U.S. investor” in the definition is because it is impractical to identify in fund investments, etc. whether the ultimate investor is a U.S. person. Also, as it is not a general practice, it would be difficult for Japanese investment trusts to prohibit investments by certain investors (e.g. U.S. investors).

[7] It is impossible for the bank itself to strengthen its control over a listed ETF by increasing the percentage of ownership interest in the listed ETF. Additionally, the bank does not have control over the fund’s investment activities.

trading strategy, and ensure the soundness of the financial stability of the U.S.), those FEFs which are highly unlikely to pose a risk to the U.S., should be excluded from the definition of BE.

Q18: Should the Agencies modify the 2013 final rule to address the issues raised by the interaction between the 2013 final rule's definitions of the terms "banking entity" and "covered fund," consistent with section 13 of the BHC Act, and if so, how?

- In some cases, a concern of being determined as a BE has arisen with respect to the vehicles other than FEFs that are excluded from the definition of covered fund (e.g. loan securitization SPC), and is disincentivizing investments in such vehicles. After having reviewed the definition of covered fund, we ask that the Agencies would recognize the possibility of the entities, which should not be managed as a BE due to their nature, falling under the definition of BE as a result of being excluded from the definition of covered fund, and appropriately review the definition of BE.
- Modifying the definition of covered fund without giving any consideration may significantly affect the existing investment business which is conducted based on the pre-modified definition. If a fund is excluded from a covered fund as a result of such modification to the definition and falls within the definition of BE, it could be necessary to establish a compliance program and take other actions to comply with the Volcker Rule for the fund. In this view, it should at least be clarified that those funds, in which non-U.S. banks invest, are a non-BE.

(Proprietary trading: Q23 to Q129)

Q23: Should the Agencies adopt the proposed new accounting prong and remove the short-term intent prong? Does using such a prong provide sufficient clarity regarding which financial instruments are included in the trading account for purposes of the proposal? Are there differences in the application of IFRS and GAAP that the Agencies should consider? What are they and how would they impact the scope of the proposed accounting prong?

- As noted in the Executive Summary, we previously have been suggesting that the Agencies remove the short-term intent prong and hence we appreciate the Agencies taking into account our suggestion.
- While the accounting prong is considered to be a clear determination criterion, the scope covered by the accounting prong overlaps with that covered by the market risk capital prong and therefore this scope may become overly broad as compared to the current definition of the trading account. Accordingly, only in determining whether or not particular purchases and sales of a financial instrument are included under the prong of the trading account, only the market risk capital prong should be

applied, and the accounting prong should not be introduced.

- For example, since held-to-maturity securities under Japanese GAAP are not in scope of the accounting, market risk capital or dealer prong, they should not be included in the scope of trading account. On the other hand, other financial instruments held for long-term intent and, which have been excluded from the current scope may be included in the proposed scope of trading account. In the case, of transactions not being included in the current scope and being included in the trading account, significant costs for establishing an additional framework may occur.
- Even if the accounting prong is introduced, with respect to accounting standards used to meet the accounting prong, we suggest that the Agencies clarify that non-U.S. banking entities are permitted to use accounting standards adopted by individual banking entities other than IFRS and US GAAP in making a determination. Japanese GAAP differ from IFRS and US GAAP in terms of the classification of securities and the recognition of profits and losses.[8] Accordingly, requiring non-U.S. banking entities, which have not adopted IFRS or US GAAP to determine based on these standards would impose excessive costs. Since non-U.S. banking entities use generally accepted accounting standards under a regime in place at respective jurisdictions, such a regime should be respected in applying the U.S. rules.

Q25 : Should the Agencies include all financial instruments that are recorded at fair value on a banking entity's balance sheet as part of the proposed accounting prong? Would such a definition be overly broad? If so, why and how should the definition be narrowed, consistent with the statute?

- Even if the accounting prong is introduced, the scope of transactions subject to the rules should be limited to transactions, such as "trading securities", whose changes in unrealized gains and losses directly affect profits and losses in a current period as per our response to Q23, considering the objective of the "short term prong" in the Final Rule, and the objective of reviewing the current rules.
- In addition, since transactions that are subject to the rules differ before and after the amendments, current legitimate holdings may be deemed to be prohibited activities once the amendments are implemented. Therefore, with respect to sell or termination, etc. of transactions that are not subject to the rules under the 2013 final rule, but are subject to the rules under the proposed amendments, exceptional

[8] For example, the treatment of unlisted equity investments may differ between Japanese GAAP and IFRS/US GAAP.

measures should be provided in order to comply with the amendments.

- Even if our suggestion above is not accepted, safe harbors should be provided to exclude certain transactions from the trading account, as discussed in the Executive Summary, in order to prevent the limitation of investments in positions that are not for trading purposes. Examples of safe harbors include:
  ① Where positions are held for 60 days or more;
  ② Positions held in the banking book, such as available-for-sale bonds; [9]and
  ③ Position to which hedge accounting is applied under national GAAP[10]

Q33: For purposes of determining whether certain trading activity is within the definition of proprietary trading, is the proposed accounting prong over- or under-inclusive? If over- or under-inclusive, is there another alternative that would be a more appropriate replacement for the short-term prong?

- The same as our response to Q23.

Q37: As compared to the 2013 final rule's dealer and short-term intent prongs taken together, would the proposed accounting prong result in a greater or lesser amount of trading activity being included in the definition of "trading account?"

- The same as our response to Q23.

Q40: Is the proposed desk-level threshold for presumed compliance with the prohibition on proprietary trading ($25 million absolute P&L) an appropriate measure for indicating that the scale of a trading desk's activities may not warrant the cost of more extensive compliance requirements?

- We understand that the provision relating to trading desks with small P&L (§_.3(c) of the proposed rules) is added with the aim of addressing an issue of unnecessary expansion of the scope by introducing the accounting prong. Therefore, we support the purpose of this provision.
- On the other hand, burden of P&L measurements and addressing a breach of a

[9] With respect to available-for-sale securities, investors who have purchased securities for purposes other than short-term intent may be incentivized to reduce P&L arising from their investments to below a certain level as a result of this amendment. This may lead to a decline in secondary transactions and impair the soundness of markets. In addition, available-for-sale securities have different purposes than trading securities under Japanese GAAP, and their accounting treatment differs (accounting of P&L).
Therefore, it is not appropriate to uniformly deem these securities as the trading account.

[10] It is obvious that transactions to which hedge accounting is applied are not for short-term income earning purposes which is prohibited by the statute. Therefore, at least, transactions to which hedge accounting is applied should be explicitly excluded from the definition of proprietary trading, instead of relying on the exception. Furthermore, in order to improve objectivity of judgement on whether hedge accounting is applied, treatment in accordance with the accounting standards established at the home jurisdiction should be permitted.

threshold are considerably heavy. Furthermore, since this provision merely sets forth the “presumption,” conservative financial institutions may find it difficult to rely on. This may rise a concern that the scope of the Volcker Rule and the scope of supervision will be expanded and that it will not be an efficient framework for both banking entities and the Agencies.

- If this provision is going to be introduced, we suggest taking an approach to exclude transactions which meet the safe harbor conditions of the scope as described in Q25, rather than taking an approach to apply a presumption of compliance that could result in excessive burden.
- In addition, if thresholds are used, daily net gains and losses used as a criterion for determining the “presumption of compliance” should be limited to “realized and unrealized gains and losses that have direct impact on gains and losses in the current period” in light of the objective of this provision to give due consideration to trading desks with small P&L.[11]

Q49 : In addition to the example noted above, are there additional scenarios under which commenters would envision foreign exchange forwards, foreign exchange swaps, or physically-settled cross-currency swaps to be used for liquidity management? Should any existing restrictions be removed to account for the proposed addition of these transactions?

- We appreciate the Agencies taking into account our comment and including cross-currency swaps and other similar transactions used for funding purposes in the scope of excluded transactions.
- On the other hand, burdens to address the requirement related to internal controls, analysis and independent testing, which is set forth in §_.6(e)(3)(v) of the 2013 final rule may, in part, be higher than that of some permitted activities. This may significantly reduce banking entities’ incentive to rely on this exclusion.
- Accordingly, in order to make an effective use of this exclusion, we suggest that the Agencies remove the requirement related to internal controls, analysis and independent testing set forth in §_.6(e)(3)(v) of the 2013 final rule.

Q50: Should the proposal be further modified to protect against the possibility of firms using the liquidity management exclusion to evade the requirements of section 13 of the BHC Act and implementing regulations?

- While non-deliverable forward (“NDF”) is used to hedge exposures to regulated

[11] The proposed amendments set forth that "unrealized gains and losses" is included in the determination of the "presumption of compliance." However, in cases where transactions subject to the Volcker Rule include available-for-sale securities under Japanese GAAP, the presumption of compliance may not be applied to financial institutions whose transaction volume, such as a purchase or sale, is not large.

currencies, we consider that it is not economically or functionally different from foreign exchange("FX") forward in terms of regulatory treatment. NDF therefore should also be included in the scope of excluded transactions.

- If the Treasury Function conducts its operations for liquidity management purposes, we suggest that the Agencies consider including all types of derivatives in excluded transactions. In particular, transactions conducted by liquidity-management related trading desks at the Treasury Function for liquidity management purposes should be deemed to be excluded transactions.

Q51: Should banking entities be permitted to purchase and sell physically-settled cross-currency swaps under the liquidity management exclusion?

- Such transactions should be permitted. In order to ensure sufficient liquidity and maintain the soundness of financial markets, banking entities use currency swaps as well as spot foreign exchanges.

Q52: Does the proposed exclusion align with existing policies and procedures that banking entities use to correct trading errors? Why or why not?

- We support the proposed exclusion of transactions, which are used to correct trading errors. In terms of segregation of positions in erroneous transactions, however, there are cases where it takes time to dispose of such positions, and cases where it is possible to dispose them immediately, such as bonds and stocks. For the latter case, conducting segregation, even temporarily, would lead to an increase in operational burden. Accordingly, segregation should not be required for such cases.

Q57: Should the Agencies revise the trading desk definition to align with the level of organization established by banking entities for other purposes, such as for other operational, management, and compliance purposes?

- Since operational and compliance management units vary across financial institutions, the classification and unit of trading desks should be determined at the discretion of each financial institution in order to achieve effective and efficient operation that is consistent with business practices.
- In view of this, the definition of trading desk should clarify that the classification and unit of the trading desk can be determined at the discretion of each financial institution.

Q59: Please discuss any positive or negative consequences or costs and benefits that could result if a "trading desk" is not defined as "the smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof."

- If the current definition of trading desk is removed and is clarified that the unit of the trading desk can be determined by taking into account the management of business practices at each financial institution, such treatment may improve efficiency as per our comments in Q57. Consequently, costs associated with the consideration of desk units may be reduced.
- However, if the current definition of trading desk is removed and a clearer criteria which further uniforms the definition is adopted, it will cause costs for reconsidering trading desk unit and significant burdens related to management of desk unit which differs from actual management practice. This does not seem to be consistent with the objectives of the Proposed Rule.

Q64: (Under the proposal, all banking entities, regardless of their volume of trading assets and liabilities, would be able to voluntarily avail themselves of the presumption of compliance with the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act by establishing and complying with these internal risk limits.) (omitted) Is the proposed presumption of compliance for underwriting activity within internally set risk limits sufficiently clear? If not, what changes should the Agencies make to further clarify the rule?

- We agree with the direction of the proposal which allows flexibility in setting the RENTD. However, while the RENTD can be decided flexibly, this may also be burdensome for banking entities because the Agencies may interfere with the RENTD decision process and banking entities may need to file reports upon exceeding or increasing a limit.
- Depending on an approach taken by the Agencies to set limits, actions taken by the most conservative banking groups may become a de facto standard which all banking groups should adhere to. This may be an impediment for banking entities in taking these actions whilst considering their actual business.
- We suggest that the Agencies consider permitting to set limits based on absolute values of profits and losses in the case of an underwriting desk at a broker within a banking group (in-house broker).

Q67: By proposing an approach that permits banking entities to rely on internally set limits to comply with the statutory RENTD requirement, the rule would no longer expressly require firms to, among other things, conduct a demonstrable analysis of historical customer demand, current inventory of financial instruments, and market and other factors regarding the amount, types, and risks of or associated with positions in financial instruments in which the trading desk makes a market, including through block trades. Do commenters agree with the revised approach? What are the costs and benefits of eliminating these requirements?

- Since internally set limits are developed and applied by each banking entity in light of capital requirements and risk management in consideration of the nature of its activities, it is reasonable to believe that the presumption of compliance requirements are met by complying with the internally set limits.
- On the other hand, as noted in the Executive Summary, the proposed requirement to report to the appropriate Authorities if a limit is exceeded or increased will cause an extremely high burden. In regards to the actions to be taken in the event of exceeding or increasing risk limits, financial institutions have already implemented recommended escalation and recordkeeping procedures. Competent authorities have already established a framework, which allows them to promptly recognize whether a limit is exceed or increased by using metrics reporting. Therefore, reporting to the appropriate Authorities in the event of exceeding or increasing a limit will create unnecessary costs for not only banking entities but also for the Agencies. We therefore oppose the real-time reporting requirement in the event of exceeding or increasing internal risk limits. If such reporting will be made a requirement, it is necessary to clarify which level of internal limits are subject to reporting as well as specific required processes for setting those limits, as at the moment there are various internal limits established within a banking entity.
- Non-U.S. banks are under the jurisdiction of their own national Agencies at each home jurisdiction. We therefore suggest that the Agencies consider removing the requirement for Non-U.S. banks to report to the U.S. agencies when a limit set at each jurisdiction is exceeded in light of respecting the supervisory right of national agencies. Furthermore, the processes for headquarters of non-U.S. banks to collect data and file a report to the U.S. agencies whenever a limit is exceeded impose significant burdens on financial institutions. Accordingly, we advise to exempt the reporting requirements on non-U.S. operations of non U.S. banks.
- Even if this requirement is implemented, real-time reporting will not have an added value as the U.S. agencies cannot immediately recognize real-time reporting due to time differences. Therefore, this reporting requirement should be limited to the establishment of a framework that enables to appropriately file a report within a reasonable timeframe upon the request of the U.S. agencies. If this suggestion is accepted, we also ask that the Agencies provide details in regards to a level of internal risk limits.

Q73: Are there other modifications to the 2013 final rule’s requirements for permitted underwriting that would improve the efficiency of the rule’s underwriting requirements while adhering to the statutory requirement that such activity be designed not to exceed the reasonably expected near term demands of clients, customers, and counterparties?

- In order to allow more flexibility, we suggest making the following changes to the proposals with regard to the presumed compliance related to the RENTD requirements for market making and underwriting activities.

① The presumed compliance with the RENTD requirements is permitted only if trading desks establish respective internal risk limits, appropriate for their risk appetite, risk capacity and business strategy, and have properly defined themselves as market maker in accordance with parameters set out in exclusions related to the market making and underwriting activities.

② Clarify that transactions with affiliates that are within the arm's length are treated as "Customer" for RENTD measurement purposes.

③ Removing reporting requirements when an internal risk limit is exceeded or increased (see our response to Q67)

Q104: Should the Agencies exclude loan-related swaps from the definition of proprietary trading under § __.3? Would including loan-related swaps within the definition of the “trading account” or “proprietary trading” be consistent with the statutory definition of trading account? Why or why not?

- Loan related swaps should be excluded from the definition of proprietary trading and should not be counted as a trading account.
- As the Agencies recognize, such type of swaps are conducted as "directly related to the terms of the loans" based on the needs on the loan side. They are not for trading purposes or for the short-term intent and do not impair the "soundness and safety of the financial systems in the U.S." Therefore, such swaps should be separately treated from other derivatives transactions conducted irrelevant to demands from clients.
- Even if such type of swaps are not excluded from the definition of trading account, they should be treated as instruments traded by a new desk which is a unit engaged in immaterial transactions, and separated from a general trading desk (an MM desk or a TOTUS desk) (i.e. managed by a dedicated desk (e.g. "Loan-related Swaps desk"). This means that separate minimum application and compliance requirements, which are different from the MM or TOTUS desk, should be set for these types of swaps).

Q107: Should other types of swaps also be addressed in the same manner? For example, should the Agencies provide further guidance, or include in any exclusion or exemption other end-user customer driven swaps used by the customer to hedge commercial risk?

- Any derivatives activities that are apparently entered into, for purposes other than the proprietary trading activities, should also be excluded from the definition of trading account, rather than limiting the exclusion to loan-related swaps.
- Examples of such transactions include hedge swap transactions which are not

entered into with a customer but are clearly matching with and managed together with loans, FX transactions to hedge investments in foreign affiliates, FX transactions conducted for FX hedges related to the leasing business, and the derivatives component of derivatives embedded deposits. Such transactions should be excluded from the definition of trading account, since they are derivatives transactions used for incidental purposes for other businesses, similarly to loan-related swaps.

- From the similar viewpoint, permitted trading on behalf of customers as defined in §__.6(c) of the 2013 final rule is a sound activity, which is generally conducted by individual financial institutions in order to manage risks arising from customer-facing activities. It is therefore apparent that such transactions are not for the trading account. As such, the Agencies is also aware that they are not subject to metrics reporting specified in the Appendix. Therefore, permitted trading on behalf of customers as defined in §__.6(c) of the 2013 final rule should not be treated as permitted trading for which a specific compliance program is required to be established. They should be excluded from the definition of trading account to avoid excessive costs.

Q111: Should the Agencies permit banking entities to include affiliate hedging transactions in determining the reasonably expected near-term demand of customers, clients, and counterparties, and in establishing internal risk limits? Why or why not?

- Each financial institution has a different structure for hedge between trading desks. For example, a financial institution that uses a hub-and-spoke model for market-making activities, have a difficulty in demonstrating activities of a market-making desk without inter-affiliate or intra-bank transactions. Accordingly, in principle, inter-affiliate or intra-bank transactions should be included in the RENTD.

Q113: What factors, if any, should the Agencies consider in determining whether to remove the requirement that a correlation analysis must be used to determine whether a hedging position, technique, or strategy reduces or otherwise significantly mitigates the specific risk being hedged?

- Because correlation analysis is burdensome and costly, we agree with the proposed amendment to remove the requirement riskless transactions.

Q118: Would reducing the compliance requirements of § __.5(b) and § __.5(c) for banking entities that do not have significant trading assets and liabilities reduce compliance costs and increase certainty for these banking entities?

- With regard to the demonstration of hedge effectiveness for riskless transactions, we agree with the proposed amendment because an incentive for financial institutions to hedge portfolio risk has been impaired due to constraints related to risk identification.

Q120: Would the proposed exclusion from the enhanced documentation requirements for trading desks that hedge risk of other desks under the circumstances described make risk-mitigating hedging activities more efficient and timely?

- We believe that reducing compliance burdens will increase the flexibility of hedged items and hedging instruments, which will lead to increasing flexibility in hedging activities.

Q122: The Agencies have proposed using accounting principles as part of the definition of trading account. Should the Agencies similarly use accounting principles to refer to risk-mitigated hedging activity?

- If our suggestion to exclude transactions to which hedge accounting is applied, from the definition of proprietary trading, is not accepted, such transactions should be clarified to be allowed as an exception to proprietary trading since they can be objectively assessed as being risk-mitigating hedging activities.
- In addition, excessive costs would be imposed on non-U.S. banks that do not adopt IFRS or US GAAP if the determination of whether hedge accounting is applied is based on these standards. Therefore, non-U.S. banks should be allowed to make a determination in accordance with national accounting standards as noted in Q23.

Q123: Is the proposal’s implementation of the foreign trading exemption appropriate and effectively delineated?

- We support the proposal to simplify the conditions in order to qualify for the foreign trading exemption, which leaves only three prongs: ① engaging as principal in a purchase or sale, ② location of the decision-maker of the purchase of sale, and ③ booking of the purchase or sale.
- We however suggest that the Agencies consider to make the prong ③ to be the only requirement for TOTUS, so that the statement in the proposal "a foreign banking entity would be able to make use of the exemption as long as the risk of the transaction is booked outside of the United States," which is the point of TOTUS, is clearly reflected in the rule.

  In this regard, the risk spreading to the U.S. is considered to be low if the legal entity requirement that the booking is not made in the U.S. is met. The other two conditions ① and ② does not allow a Japanese parent company, which is a BE, to involve their subsidiary or branch located in the U.S., which is also a BE, in a purchase or sale of bonds or stocks traded in the U.S. markets. As a consequence, the businesses of these subsidiaries and branches located in the U.S. have been downsizing.

- In addition to the modifications to the TOTUS requirements discussed above, we suggest that the Agencies clarify the following points in order to avoid a reduction in trading activities.
  - ✓ A TOTUS desk can conduct a transaction with a desk at an affiliate or a branch office located in the U.S.;[12] if the two desks are operating independently and both desks are compliant with the Volcker Rule.
  - ✓ A case, where investments of assets held are outsourced to a non-U.S. entity, and this service organization outsources to a sub-service organization that is a U.S. entity shall not be deemed as “personnel of a U.S. entity are involved in the execution";
  - ✓ There is no restrictions in relation to the use of a dark pool for transactions involving U.S. entities as agent;[13]
  - ✓ In determining whether a banking entity (including relevant personnel) engaging in, or making the decision to, a purchase or sell as principal, is not located in the U.S., in a case where non-U.S. personnel select products or instruments to be traded and determine whether an investment is permitted, and internally review whether financial instruments to be traded meet investment criteria, is not deemed to be engaging in, or making the decision to, the purchase or sale as principal;[14] and
  - ✓ Similarly to the arrangement and negotiation, the execution of leave orders, executed by U.S. residents, which are not accounted for as principal directly or on a consolidated basis in the U.S., is deemed to be a limited involvement.

Q124: Are the proposal’s provisions regarding when an activity will be considered to have occurred solely outside the United States for purposes of the foreign trading exemption effective and sufficiently clear? Should additional requirements be added? For example, should the financing prong or the counterparty prong be retained or modified rather than eliminated?

[12] For non-U.S. banking entities to conduct transactions in the U.S. markets, they need to meet the requirements to qualify for permitted activities other than TOTUS while there is a time difference, etc. This has become burdens for non-U.S. banking entities. Transactions with subsidiaries located in the U.S. and inter-affiliates or inter-banks transactions with branches located in the U.S. are, in substance, equivalent to directly conducting transactions with the U.S. bank by the TOTUS desk and are not considered to be law-evading activities such as practically conducting trading activities in the U.S. via affiliates and branches located in the U.S. We believe that permitting such transactions would contribute to an increase in liquidity in the U.S. markets.

[13] The same as above.

[14] The same as above.

- We support the proposals to remove the financing and counterparty prongs of TOTUS requirements. The counterparty prong have caused a decline in liquidity in the markets by restricting transactions between non-U.S. banks and U.S. banks, which in turn have led to a decline in services for both Non-U.S. and U.S. banks in terms of liquidity supply to their customers. The financing and counterparty prongs also pose a high practical hurdle to demonstrate that the requirements are met, and impose excessive burdens on non-U.S. banks to implement the Volcker Rule.[15] The elimination of these requirements will significantly improve the transparency in applying the Volcker Rule.

Q127: Does the proposal's approach raise competitive equity concerns for U.S. banking entities? If so, in what ways? Would the proposed modifications allow for foreign entities to access the U.S. markets without commensurate regulation? How would this impact competition? Would this disadvantage U.S. entities?

- The removal of the counterparty prong may increase market liquidity and enable sharper pricing.
- As indicated in the Executive Summary, the extraterritorial application of the Volcker Rule should be discussed in terms of its impacts on the soundness of the U.S. financial system and should not be discussed from a perspective of competitive advantages and disadvantages between U.S. banking entities and non-U.S. banking entities. Non-U.S. banking entities should be able to appropriately conduct operations under the supervision of their home agencies to the extent that they do not affect the soundness of the U.S. financial system, and therefore the Volcker Rule should not be overly applied extraterritorially.

Q129: The proposed approach would eliminate the requirement in the 2013 final rule that personnel of the banking entity who arrange, negotiate, or execute a purchase or sale under the foreign trading exemption be located outside the United States. Should this requirement be removed?

- Given that the objective of the Volcker Rule is to ensure the soundness of the U.S. financial system, prohibiting non-U.S. banking entities from engaging in, and booking, transactions outside the U.S merely because personnel is located in the U.S., and therefore involved to a certain degree lacks a reasonable basis.
- Since the definition of "relevant personnel" will become unclear as a result of removing the ANE requirements, we suggest that the Authorities clarify the extent

[15] In some cases, counterparties which are, in substance, not U.S .entities such as international financial institutions are subject to the Volcker Rule. Therefore, if the counterparty prong is removed as a result of this amendment, it is expected that complicated procedures for confirming customers will be eliminated, and operational burdens will be significantly reduced.

to which personnel located in the U.S. are permitted to be involved in transactions.

(Fund investments: Q131-Q199)

Q131: Instead of retaining a unified definition of "covered fund," should the Agencies separately define "hedge fund" and "private equity fund" or define "covered fund" as a "hedge fund" or "private equity fund"?

- The current definition of covered fund is broad, resulting in an issuer, used for securitization purposes, being determined as a covered fund even though it is not a hedge fund or PE fund.
- The current definition of covered fund exceeds the assumed scope of funds that should be regulated. Inclusion of those funds that do not have typical characteristics of a hedge fund or private equity fund into the scope is restricting the involvement of those asset management companies, that are affiliated with a foreign bank and located in the U.S., and consequently healthy competitive environment for the asset management business has been inhibited. When a bank-affiliated asset manager provides investment services to U.S. residents through, among other things, privately placed investment trusts, such trusts, that are managed by the asset manager may become covered funds irrespective of its investment strategy and risk, etc. This is not consistent with the original objective of the regulation to restrict investments in hedge funds and private equity funds. In addition, entities incur significant legal costs in relation to the covered fund determination. In this view, as noted in the Executive Summary, it would be appropriate to the funds that can be easily assessed based on the apparent criteria as not having typical characteristics of a hedge fund or private equity fund from the definition of "covered fund".
- In order for the Volcker Rule to solely cover those activities relating to the U.S., the statement "being offered and sold within the U.S." should be added as one of the conditions to become a covered fund.
- Clarifying the definition would add a substantial value to the compliance program. However, we recommend that the Agencies to not introduce new permitted activities, etc. because entities would incur additional costs in order to establish the determination process.
- According to the definition described in section__.10(b)(1)(i) of the 2013 final rule, covered fund can be interpreted as being the funds that are offered for sale or sold to residents in the U.S. On the other hand, according to the preamble to the 2013 final rule, not only the funds, offered for sale or sold in the primary market, but also the funds, transacted with residents of the U.S. in the secondary market, are also deemed as covered funds unless such transactions are restricted by the prospectus or written agreement. In light of the objective of the provided provision, limiting the

offering for sale and sale in the primary market should make a significant effects. Furthermore, as banks act as one of the investors, they are unable to control secondary trades between third parties. From this viewpoint, the definition of covered fund should include offering for sale and sale to residents of the U.S. in the primary market and should exclude secondary trades.

- There is no business practice for domestic funds in non-U.S. countries which are not assumed to be offered for sale or sold to U.S. residents outside the U.S., to specify in the prospectus or written agreement that they will not be offered for sale or sold to residents in the U.S. However, due to the current requirement, BEs are forced to request fund managers to take such an action in practice, imposing excessive costs on fund managers as a result. Given this, we suggest that the Agencies should not require BE's confirmation with the document such as prospectus or written agreement.
- It is not clear whether there is a need to separately define "hedge fund" and "PE fund," as it is difficult to define the term "hedge fund," and therefore this definition should not be used in the first place.
- It is unclear whether the Volcker Rule intends to restrict indirect investments in equities by prohibiting entities from holding PE funds. Even in the case of indirect investments, the Basel Capital Accords, for example, requires a BE to calculate the amount of Risk-weighted Assets by the look-through approach for equities held by BEs unless whether or not directly and thereby to maintain appropriate capital as a whole. We consider that this requirement can be relied on.

Q133 : In the preamble to the 2013 final rule, the Agencies stated that tailoring the scope of the definition of "covered fund" would allow the Agencies to avoid unintended results that might follow from a definition that is "inappropriately imprecise." Has the final definition been "inappropriately imprecise" in practice?

- In order to clarify the definition of SOTUS Exemption under the proposal, an element of FAQ13 is incorporated in §__.13(b) of the 2013 final rule. The definition described in §__.13(b)(1) of the 2013 final rule is, in substance, considered to have the same meaning as "FEF." Activities applicable to the SOTUS Exemption would not pose a substantial risk to the U.S. market, and therefore should not cause the concern for U.S. Agencies. Given this, such activities should be deemed as excluded activities and the existing §__.13(b)(1) of the 2013 final rule should be used to define these activities.

Q136: What kinds of compliance and other costs have banking entities incurred in analyzing whether particular issuers are covered funds and implementing compliance programs for covered fund activities?

- Since the definition of “offered for sale or sold to a resident of the U.S.” is ambiguous, there are some cases where a fund is conservatively treated as a covered fund if the likelihood of a U.S. resident’s retention of ownership interest in that fund cannot be denied.
- If the ratio of ownership interest in a fund that is excluded from the covered fund definition is high, a fund may be deemed as a BE even if the entity does not have control of the fund. As a result, a considerable amount of additional burdens are imposed on entities, such as inserting an additional description, regarding the Volcker Rule compliance, in the written agreement through negotiation with the organizer of the fund and other parties.
- There are some cases where legal advice is sought with respect to, among other things, whether an exemption (loan only or Rule 3a-7) can be applied to a purchase of loan securitizations and whether a Master Fund and Feed Fund is respectively deemed as a covered fund in the Feeder-Master Fund scheme (and ultimately the SOTUS Exemption should be applied), giving more burdens and legal costs, etc.
- Non-U.S. listed ETFs/publicly offered investment trusts, etc. should be clearly excluded from the covered fund definition because requiring to base the covered fund determination on an element, insignificant for non-U.S. banking entities (i.e. investment by a U.S. person), may incur additional compliance costs.

Q137: If the Agencies modify the covered fund base definition in whole or in part, would banking entities expect to incur significant costs or burdens in order to become compliant?

- If the covered fund base definition is not modified to the extent that it is consistent with sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940, a fund may become subject to the regulation in an unexpected manner, in this way increasing the number of funds to which the SOTUS Exemption needs to be applied for or which need to be managed under Super 23A. In such case, significant costs would be required to seek legal opinions for each fund being held, which would increase a burdens for compliance management. Furthermore, if a fund must be terminated in order to comply with the modified definition, it would have a significant effect on asset management. A series of compliance actions would have require significant human resources and time, and thus would have a huge impact.
- Most of other exemptions being applied relate to loan securitizations, still resulting in the increase of costs for seeking legal advice. Such legal fees could be reduced if exemptions are simplified although it depends on risk recognition for a concern of being determined as a BE.
- We ask that the Agencies would recognize the possibility of the entities, which should not be managed as a BE due to their nature, falling under the definition of

BE as a result of being excluded from the definition of “covered fund”, and also appropriately review the definition of BE.

Q140: Are foreign funds that satisfy the current conditions in the FPF exclusion sufficiently similar to RICs such that it is appropriate to exclude these foreign funds from the covered fund definition? Why or why not?

・ While foreign public funds are required to satisfy the condition if 15 percent or less of the fund’s interests are sold to investors that are residents of the United States, it is impossible for each banking entity to confirm whether foreign funds meet this condition. Out of all asset management companies in Japan, only “bank-affiliated asset management companies” would be required to regularly confirm with all distributors “the existence of U.S. residents or the number of U.S. residents, if any, and the number of beneficiaries” in relation to all non-U.S. public funds. Administrative burden arising therefrom could undermine the development/retention of a favorable business relationship with distributors. Level playing field should be ensured for asset management businesses.

Q142: Do FPFs present a heightened risk of evasion that justifies these additional conditions, as they currently exist or with any of the modifications on which the Agencies request comment below?

・ Non-U.S. listed ETFs and other highly transparent funds would be unlikely to present a heightened risk of evasion even if no additional conditions that are not applied to RICs are applied.

Q145: The Agencies understand that some funds may be formed under the laws of one non-U.S. jurisdiction, but offered to retail investors in another. (…) In this case a foreign fund could be authorized for sale to retail investors, as contemplated by the FPF exclusion, but fail to satisfy this condition. Should the Agencies modify this condition to address this situation? If so, how?

・ Applying a unified regulatory requirement, which does not consider situations that might be unique to respective non-U.S. jurisdictions, will lead to unnecessary negative impact on the financial stability outside the U.S. and undue increase in regulatory burdens. Given this, the condition, regarding the offering for sale and the sale in home jurisdictions, should be deleted.

Q146: Should the Agencies, for example, modify the condition to omit any reference to the fund’s “home jurisdiction” and instead provide, for example, that the fund must be authorized to offer and sell ownership interests to retail investors in “the primary jurisdiction” in which the issuer’s ownership interests are offered and sold? (…) For

purposes of determining the primary jurisdiction, would the Agencies need to define the term “primary” or a similar term to provide sufficient clarity? If so, how should the Agencies define this or a similar term?

- The Agencies should omit any reference to the fund’s “home jurisdiction” or “primary jurisdiction”, and instead modify the condition to simply require the funds to “offer and sell ownership interests predominantly outside the U.S.”

Q160: Should the Agencies exclude from the definition of “covered fund” entities that lack certain enumerated traits or factors of a hedge fund or private equity fund? (…) For instance, the SEC’s Form PF defines the terms “hedge fund” and “private equity fund,” (…) Would it be appropriate to exclude from the definition of “covered fund” an entity that does not meet either of the Form PF definitions of “hedge fund” and “private equity fund”?

- Referencing the Form PF definition of “hedge fund”, in order to define characteristics of a hedge fund, is considered to be inappropriate. In some circumstances, short position and leverage, etc. is needed for hedging purposes or for generating appropriate return. Taking this into account, a fund should not be subject to the regulation by sole virtue of taking such a position.

Q165: The Agencies request that commenters advocating for a characteristics-based exclusion explain why particular characteristics are appropriate, what kinds of funds and what kinds of investment strategies or portfolio holdings might be excluded by the commenters’ suggested approach, and why that would be appropriate.

- When a bank-affiliated asset manager provides investment services to U.S. persons through, among other things, privately placed investment trusts, the asset manager becomes a covered fund irrespective of its investment strategy and risk, etc. This is not consistent with the original intent of the regulation to restrict investments in hedge funds and private equity funds. For example, as mentioned in the Executive Summary, we consider that the original intent of restricting banking entities’ excessive risk-taking could be achieved by regulating, in particular, those funds, which have such compensation arrangements, that could easily incentivize high-risk investments.

Q169: If the Agencies were to provide a characteristics-based exclusion, to what extent and how should the Agencies consider section 13’s limitations both on proprietary trading and on covered fund activities?

- It would not be easy to identify short-term sales/purchases based on their external form. Therefore, as mentioned in the Executive Summary, preferably, the term “hedge fund” should be defined in a manner that can easily identify it based on its external form.

Q172: Has the 2013 final rule's exclusion for joint ventures allowed banking entities to continue to be able to share the risk and cost of financing their banking activities through joint ventures, and therefore allowed banking entities to more efficiently manage the risk of their operations, as contemplated by the Agencies in adopting this exclusion?

- Given that private equity investments through proprietary trading is not subject to the regulation, those joint ventures, that are not broadly offered for sale to investors and are formed in partnership with other companies, should also be excluded from the scope of application of the regulation. Therefore, we suggest that the Agencies delete the phrase "other than investing in securities for resale or other disposition" from paragraph (ii) of §__.10(c)(3) of the 2013 final rule and also remove the requirement described in paragraph (iii).

Q176: Are there any concerns about how the 2013 final rule's exclusions from the covered fund definition for loan securitizations, qualifying asset-backed commercial paper conduits, and qualifying covered bonds work in practice?

- As a result of loan securitizations being excluded from the covered fund definition, BE investors in securitizations are now unsure, whether a securitization SPC is not a BE. This has prompted them to limit their ownership interest in the securitization SPC because if the securitization SPC is determined as a BE, a significant amount of additional costs, related to the compliance with the BE-related rules, will incur and short-term transactions involving cash equivalent, that the issuing entity is permitted to hold under the final rule's provision pertaining to exclusion of loan securitizations, will be deemed as the trading account and therefore will violate the proprietary trade regulation.
- As to asset-backed commercial paper ("ABCP") conduits, we ask that the Agencies exclude them from the scope of application of the prohibition of covered fund investments or to determine that they are not a covered fund.
- We suggest that the Agencies clarify the definition of "ownership" of a fund.

Q177: Are there particular issues with complying with the terms of this exclusion for vehicles that are holding loans? (…) Should the Agencies consider permitting a loan securitization vehicle to hold 5 percent or 10 percent of assets that are considered debt securities rather than "loans," as defined in the 2013 final rule?

- As described in the Executive Summary, we recommend that the Agencies allow inclusion of other assets to the extent that the product nature and risk profile of the loan securitization does not vary significantly. Specifically, we suggest that the

Agencies allow inclusion, to a certain extent, of senior secured bonds if the prospectus can confirm that they have priority for repayment ranking pari passu with senior secured loans.

Q178 : Should the Agencies modify the loan securitization exclusion to reflect the views expressed by the Agencies' staffs in response to a FAQ that the servicing assets described in paragraph 10(c)(8)(i)(B) of the 2013 final rule may be any type of asset, provided that any servicing asset that is a security must be a permitted security under paragraph 10(c)(8)(iii) of the 2013 final rule?

- In addition to the proposed modifications to the text, we suggest that the Agencies provide specific examples.

Q179 : Are there modifications the Agencies should make to the 2013 final rule's definition of the term "ownership interest" in the context of securitizations?

- It would be appropriate to exclude the comment that an interest in securitizations has the senior/subordinated structure except for an interest held by the most subordinated investor, which is essentially an equity interest, from the definition of "ownership interest". Investors in such securitizations do not receive residual property and their "right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor" is designed to limit the rights of the most subordinated investor just before the occurrence of an event of default, similarly to the covenant in the case of loans, and not to allow active participation in removal.
- Under the structure of securitizations, multiple indicators are already established to objectively indicate that an event of default will occur at some point in the near future. Triggering the exercise of the "right to participate in the selection or removal" based on these indicators means that the rights of creditors are protected.
- The current "ownership interest" definition only excludes the rights of a creditor to exercise remedies upon the occurrence of "an event of default or an acceleration event". Similarly, we suggest that the Agencies exclude the following right: "the right to participate in the removal of an investment manager for cause, and the right to nominate or vote for the replacing manager after the investment manager's resignation or removal".

Q189 : Is the proposal's implementation of the foreign fund exemption effective? If not, what alternative would be more effective and/or clearer?

- We welcome that the proposal removed the financing prong from the requirements to qualify for the SOTUS Exemption.

- While §__.13(b)(1) of the 2013 final rule is a condition to qualify for the SOTUS Exemption, we recognize that it is equivalent to the FEF requirement. Further, §__.13(b)(3) of the 2013 final rule defines in detail the requirement in §__.13(b)(1)(iii) of the 2013 final rule. If the phrase "an offering that targets residents of the United States" stipulated in §__.13(b)(3) of the 2013 final rule is one of the conditions for the SOTUS Exemption, namely one of the conditions for the covered fund; those funds that do not meet this condition would be a non-covered fund as a FEF, if they satisfy all other conditions for being excluded from the covered fund definition. Please confirm whether this interpretation is correct.
- The proposal amends the text to read as follows: "an offering that targets residents of the United States". We ask the Agencies to provide a specific guidance on how entities should demonstrate such situation (for example, describing "target for residents of the United States" in the prospectus, etc. that stipulates that Regulation S under the U.S. Securities Act is not applied).
- If it is confirmed that a certain BE group as a whole does not have certain relationships (e.g. investment manager and investment adviser) with a covered fund, a fund should be treated as a FEF instead of a covered fund because, in regards to the marketing restriction, there would be no issue relying on the SOTUS Exemption.
- In addition, certain funds for which "an offering that targets residents of the United States" is not specified should also be treated as a FEF, providing it is confirmed that a certain BE group as a whole does not have certain relationships (e.g. investment manager and investment adviser) with a covered fund.

Q191：Should the financing prong of the foreign fund exemption be retained?

- It is preferable that the financing prong of the foreign fund exemption is removed because banks have a general practice to engage in covered fund activities only after credit risk and profitability of the covered fund was sufficiently taken into account.

Q192：Is the proposed exemption consistent with limiting the extraterritorial reach of the rule with respect to FBOs?

- Due to the marketing restriction, non-U.S. banks, that have both a sufficient sales base and capabilities to develop attractive products, are forced to choose whether to retain an ownership interest in the covered fund through reliance on the SOTUS Exemption (and thereby achieve capital gain) or to engage in asset management activities (and thereby earn profits).
- On the other hand, financial institutions, that only have either a sales base or product development capabilities, or financial institutions, that have neither of such qualities,

cannot expect profits from asset management activities, and therefore it would be extremely difficult for them to have a competitive advantage over U.S. bank. Given this, the marketing restriction are meaningless for them.

- As noted in the Executive Summary, the extraterritorial application of the Volcker Rule should be discussed in terms of its impacts on the soundness of the U.S. financial system and should not be discussed from a perspective of competitive advantages and disadvantages between U.S. banking entities and non-U.S. banking entities. Non-U.S. banking entities should be able to appropriately conduct operations under the supervision of their home agencies to the extent that they do not affect the soundness of the U.S. financial system, and hence the Volcker Rule should not be overly applied extraterritorially.

Q193: Is the Agencies' proposal regarding the 2013 final rule's marketing restriction, which reflects the staff interpretations incorporated within previous FAQs, sufficiently clear?

- We do not think that retaining an ownership interest in a covered fund in reliance on the SOTUS Exemption will pose any risk to the Volcker Rule's objectives to avoid the use of U.S. taxpayers' money in the event of a default of a bank and ensure the soundness of the U.S. market.
- In addition to the above, if the marketing restriction is not breached, there are no need to modify the existing framework to regulate acquisition/retention of an ownership interest in a covered fund for which a third party is serving as an investment manager and investment adviser, etc. If the Agencies are still determined to implement the proposed modification, they should clarify what risks are posed by non-U.S. banks' acquisition/retention of an ownership interest in a covered fund and then design the regulation to mitigate such risks.

Q194: Are clearing services provided by an FCM to its customers a relationship that would give rise to the policy concerns addressed by § __.14 of the 2013 final rule?

- If the definition of covered fund outside the U.S. will be limited, it becomes almost unlikely that such transactions will take place. Therefore, they should not give rise to the said policy concerns.

Q197: The letter

provided by a registered FCM to covered funds for which affiliates of the FCM are engaged in the services identified in § __.14(a) including, for example, investment management services.

Is the proposal's approach to implementing the limitations on certain transactions with a covered fund effective?

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- It is reasonable, and has certain effects, to restrict specific transactions with covered funds that are within the U.S. However, applying such a restriction to FEFs, which are treated as a covered fund by sole virtue of its interest being held by a U.S. resident imposes excessive regulatory burden. In this view, they should be allowed to rely on local legislation, the regulatory capital framework such as Basel III, or other appropriate regulations.
- According to the proposal, lending activities temporarily conducted upon clearing of securities continue to be prohibited. Borrowing and other similar activities, conducted for the purposes of paying cancellation charges and settling securities, contribute to investor protection, and therefore should not be subject to the regulation.
- It is stipulated that a BE, serving (directly or indirectly) as the investment adviser to a covered fund, may not enter into a transaction with the covered fund that would be a covered transaction as defined in Super 23A. We suggest that the Agencies clarify that the term "investment adviser" in this context does not intend to include advisory services for individual issues (e.g. financial advisory for purchase and financial advisory for sale).

Q199: Should the Agencies amend § __.14 of the 2013 final rule to incorporate the quantitative limits in section 23A of the Federal Reserve and the Board's Regulation W?

- With respect to holding of an ownership interest in a fund, a certain percentage is applied to determine whether the fund is controlled. On the other hand, transactions such as loans under Super23A are absolutely prohibited, which is considered to be an overly strict regulation from the perspective of the original objective of section 23A of the Federal Reserve Act, i.e. to restrict extension of credit to the affiliate, etc. In practice, it requires significant workload to manage the amount of loans, and it would be easier to implement the requirement which either permits or prohibits the transactions.

(Compliance Program: Q204-Q291)

Question 204: What are some of the specific operational or other burdens or expenses associated with the CEO attestation requirement? Please explain the circumstances under which those potential burdens or expenses may arise.

- We suggest that processes for the CEO attestation to the Agencies be streamlined (e.g., establishing one e-mail address for every Agency).

Questions 219-233: Should the Agencies require banking entities to report changes in desk structure in the XML reporting format in addition to a description of the changes in the Narrative Statement? (Excerpted question)

- We believe it is advisable to retain the current requirements, and therefore oppose the proposed amendments.
- With respect to metrics reporting, the current rules set out the same criteria for defining measurement among Panels 5 to 7, while the measurement definition to identify Value differs across products. Accordingly, the current rules provide a more simplified mechanism that uses "standardized formats for all products" through transmitting information to a calculation batch from upstream systems. Whereas, under the proposed rules, these current assumptions are not met since the measurement definition differs across panels and products. Therefore, banking entities need to take actions to first "obtain information from upstream which varies by product and Panel."
- If one of the factors that cause difficulty in understanding the Customer-Facing Activity Measurements is the absolute value of all transactions over the reporting period (the impact of large-lot trading is maintained for up to 90 days), an approach to change the absolute value of all transactions to the daily value of transactions is sufficient instead of introducing a new measurement.
- Since the preparation of Desk Information has not been required, operational burden, such as assessing definitions, is expected to additionally incur.
- If this information will be created using systems, burdens and costs, related to developments and modifications would also incur.

Questions 234-241: Is the information required by the proposed Quantitative Measurements Identifying Information effective and sufficiently clear? (Excerpted question)

- We believe it is advisable to retain the current requirements, and therefore oppose the proposed amendments.
- While specific costs are unclear at the moment, this information has not been required under the current rules, and therefore it is likely that operational burdens, such as assessing definitions, will occur to some extent.
- If this information will be created using systems, burdens and costs related to developments and modifications will also incur.

Questions 242-244: Should the Narrative Statement be required? (Excerpted question)

- We believe it is advisable to retain the current requirements, and therefore oppose the proposed amendments.

- This requirement would cause operational burden to a certain extent in preparing the Narrative Statement, such as changing descriptions.
- If this information will be created using systems, burdens and costs, related to developments and modifications will also incur.

Questions 245-254: Is the proposed frequency of reporting the Trading Desk Information, Quantitative Measurements Identifying Information, and Narrative Statement appropriate and effective? (Excerpted question)

- We believe it is advisable to retain the current requirements, and therefore oppose the proposed amendments.
- Changing the scope of calculation items and reporting formats for quarterly metrics reporting would entail changes in metrics measurement systems, and also incur considerable operation burdens and costs such as system development outsourcing costs in connection with changing systems.

Questions 257-284: Should Stressed VaR limits be removed as a reporting requirement for desks engaged in permitted market making-related activity or risk-mitigating hedging activity? (Excerpted question)

- We believe it is advisable to retain the current requirements, and therefore oppose the proposed amendments.
- If customer-facing activities items are eliminated and new measurements are newly established, measurements tools need to be modified and therefore considerable time will be needed, if time required for testing is taken into account.
- In addition to securing development staff, outsourcing costs will also incur. It is expected that considerable burdens will incur in order to address changes in the contents of quarterly metrics reporting.