GROSVENOR
CAPITAL MANAGEMENT, L.P.

February 13, 2012

Via Electronic Delivery

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket ID OCC-2011-14

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD85

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1432
RIN 7100 AD 82

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number S7-41-11

Commodities Futures Trading Commission
Attention: David A. Stawick, Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Restrictions on Proprietary Trading and Certain Interests in and Relationships with Hedge Funds and Private Equity Funds

Ladies and Gentlemen:

Grosvenor Capital Management, L.P. ("Grosvenor") is an investment adviser registered with the Securities and Exchange Commission ("SEC"). Grosvenor has sponsored and managed portfolios of hedge funds on behalf of investors around the world for four decades. Headquartered in Chicago, with affiliated offices in New York, Tokyo and London, Grosvenor manages approximately $23 billion on behalf of investors, 95% of which are institutional in nature. Our products afford various types of institutional investors access to diversified portfolios of covered funds that seek to generate attractive risk-adjusted returns over a market cycle. We are also a strong advocate for best practices in the hedge fund industry and have been at the forefront of encouraging a growing trend among asset managers to operate institutional quality firms consistent with the expectations of our clients. Among our clients are banks organized outside the U.S., the operations and activities of which fall predominantly outside the U.S., but which nevertheless are subject to Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule."

We appreciate the opportunity to submit comments on the interagency joint proposed rule (the "Proposed Rule")[1] implementing the Volcker Rule. The focus of our comments is on Section 13(d)(1)(I) of the Bank Holding Company Act of 1956 ("BHC Act")[2], which permits certain covered fund activities and investments so long as the activity occurs solely outside the United States and the banking entity meets the requirements of Section 4(c)(9) or 4(c)(13) of the BHC Act, and § __.13(c) of the Proposed Rule which seeks to implement this statutory exemption.

We believe the Proposed Rule should be clarified to provide that a foreign bank that would otherwise be allowed under the Volcker Rule to invest in an offshore covered fund would not be prevented from making such investment because the fund in which the foreign bank invests is ultimately commingled with investments by U.S. residents, provided the foreign bank makes a passive investment in the fund and does not organize, sponsor, offer or sell that fund to U.S. residents. We respectfully suggest that this change is important because a failure to modify the exemption in this way is likely to result in an outflow of foreign bank capital from the U.S. that could cause substantial harm to the U.S. economy.

I. The Exemption

Section 13(d)(1)(I) provides that the following activity is permitted:

> The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.[3]

As noted in the Notice of Proposed Rulemaking, the purpose of this exemption "appears to be to limit the extraterritorial application of the statutory restrictions on covered fund activities to foreign firms that, in the course of operating outside the United States, engage outside the United States in activities permitted under relevant foreign law, while preserving national treatment and competitive equality among U.S. and foreign firms in the United States.[4] The policy considerations underpinning this exemption are therefore twofold: (i) to properly circumscribe the extraterritorial reach of the Volcker Rule's prohibitions, and (ii) to preserve competitive equality between U.S. and foreign banks. We believe that most aspects of the Proposed Rule implementing this exemption properly reflect these considerations.[5] However, we believe that one element does not. Specifically, we believe that the requirement of the

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1 *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, Notice of Proposed Rulemaking*, 76 Fed. Reg. 68,846 (Nov. 7, 2011) and *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Covered Funds*, available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister011112c.pdf (both together, the "Notice of Proposed Rulemaking" or "NPR").

2 12 U.S.C. 1851(d)(1)(I).

3 Id.

4 NPR at 68,910 (citing 156 Cong. Rec. S5897 (daily ed. July 15, 2010) (statement of Sen. Merkley)).

5 The conditions to the exemption are that: (i) the covered banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States; (ii) the activity is conducted pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act; (iii) no ownership interest in such covered fund is offered for sale or sold to a resident of the United States; and (iv) the activity occurs solely outside of the United States. § __.13(c)(1).

Proposed Rule that "no ownership interest in such hedge fund or private equity fund [be] offered for sale or sold to a resident of the United States", absent clarification as to *who* offers or sells the interests, would impede the ability of foreign banks to continue to invest through offshore covered funds.

II. Statutory Intent of the Exemption

We do not believe interpreting the prohibition on offers or sales to a resident of the United States as it has been in the Proposed Rule is consistent with the policy objectives of this exemption. Senator Merkley explained with respect to the first policy objective that this exemption recognizes "rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States, to engage in activities permitted under relevant foreign law."[6] With respect to the second policy objective, Senator Merkley stated that the exemption seeks "to maintain a level playing field by prohibiting a foreign bank from improperly offering *its* hedge fund and private equity fund *services* to U.S. persons when such offering could not be made in the United States."[7]

Congress recognized the need to limit the extraterritorial reach of the Volcker Rule and created this exemption to permit foreign banks to continue to operate outside of the U.S. At the same time, Congress was also cognizant of the competitive considerations fostered by the global reach of major foreign banks, and it sought to ensure that the exemption not be so broad as to enable a foreign bank to offer "***its*** hedge fund and private equity fund ***services*** to U.S. persons"[8] in a manner that was not permitted for U.S. banks under the Volcker Rule. The Proposed Rule does not, however, maintain this balance. Rather, it applies the prohibition to any offers and sales to U.S. residents by anyone, even if a foreign bank's only connection to the covered fund is that of a purely passive investor.

As currently drafted, this exemption contains two references to the prohibition on offers and sales to U.S. residents. It provides in §____.13(c)(1)(iii) that the general prohibitions of the Volcker Rule do not apply to "the acquisition or retention of any ownership interest in, or the sponsorship of, a covered fund by a covered banking entity if ... no ownership interest in such covered fund is offered for sale or sold to a resident of the United States." In addition, the Proposed Rule's §____.13(c)(3), which defines the phrase "solely outside of the United States," requires that "no ownership interest in such covered fund [be] offered for sale or sold to a resident of the United States." However, this exemption fails to distinguish situations where a foreign bank sponsors and markets its own covered fund products to U.S. residents from those where a foreign bank simply makes a passive investment in a covered fund that it has not organized, sponsored, offered or sold. The need for a clarification stems from the manner in which covered funds are structured and the adverse consequences that would arise from an application of the prohibition by regulators in a manner that is both overly broad and inconsistent with statutory intent.

III. Standard Industry Structure

Investment managers that operate covered funds typically raise capital from various categories of investors around the world. One significant source of this capital is foreign banks that seek to allocate a portion of their assets to attractive alternative investment strategies. Although the investor base for a given covered fund may be diverse, investors typically all seek to have their capital managed by the investment manager in a fair and efficient manner. To help promote fairness and efficiency, investment

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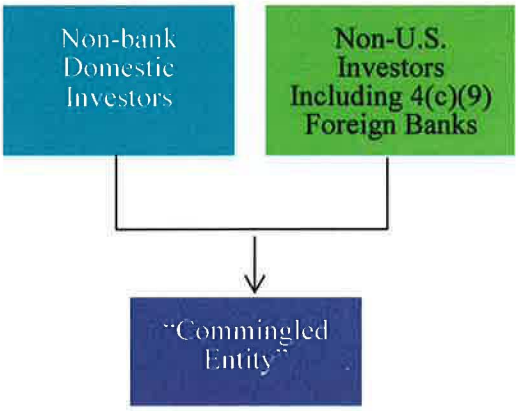
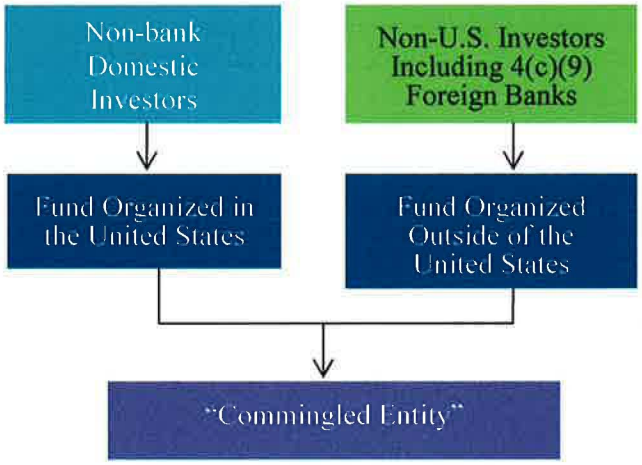
6 156 Cong. Rec. S5897 (daily ed. July 15, 2010) (statement of Sen. Merkley).

7 Id. (emphasis added).

8 Id. (emphasis added).

managers structure a large portion of covered funds so that all capital, from whatever source, seeking to be managed by a particular investment manager pursuant to a particular strategy, is ultimately commingled in a single investment vehicle. Consequently, the capital of foreign banking entities will, in most instances, be managed together with capital of other investors, including the capital of investors that are U.S. residents. The diagrams below depict generally two principal ways in which such investment programs are structured.





The "commingled entities" depicted above are designed to treat all investors equitably and facilitate efficient capital management through (i) the provision of consistent and fair allocations of investment opportunities among investors, (ii) affording consistent levels of invested positions for all investors and (iii) enabling the investment program to operate through a single investment vehicle that affords administrative ease, convenience and cost savings. The ability to structure investment vehicles in this manner is an important tool for investment managers that benefits investors. We do not believe there is any purpose under the Volcker Rule furthered by the Proposed Rule's approach to these structures. In fact, as an adviser to institutional investors, including foreign banks, on alternative asset investments, we have long advocated for the use of these structures for the benefit of clients.

IV. The Need for Clarification

In light of the fact that many covered funds commingle domestic and offshore investments, there could be serious unintended consequences resulting from a failure to clarify that the prohibition on offers and sales to U.S. residents is intended to apply solely to offers and sales to a U.S. resident by a foreign bank of ownership interests in covered funds that are sponsored or maintained by the foreign bank. Thus, absent clarification, the regulations could be applied in a manner that would preclude a foreign bank's investment in an offshore fund as a result of that offshore fund being offered or sold by a third party to U.S. residents or commingling that offshore fund with another fund that has U.S. residents as investors, notwithstanding the fact that the foreign bank itself was not in any way involved in organizing or sponsoring, or offering or selling, the offshore covered fund to U.S. residents.

Clarifying the statutory intent through the regulations will prevent potentially serious unintended consequences to:

- *U.S. Capital Markets*. The foreign bank investment enhances the liquidity and proper functioning of U.S. capital markets.

- *U.S. Economy*. A significant portion of the capital invested in covered funds is in turn invested in the debt and equity of U.S. companies, supporting business and job growth, helping to maintain an attractive cost of capital and credit.

- *Jobs*. The U.S. asset management industry, and related businesses and professional services firms, manage and service a significant portion of foreign bank capital invested in covered funds and avoiding significant outflows of capital will preserve jobs in the financial services sector.

- *Economic Growth and Tax Receipts*. The loss of significant amounts of assets under management will reduce overall business activity within and the revenues of the U.S. asset management industry with concomitant reductions in federal and state tax receipts.

Conversely, such clarification does not unduly expand this exemption or create opportunity for evasion. The exemption's availability would remain limited to a precisely defined category of foreign banks and to their passive investment activities and precludes domestic banks from accessing this permitted activity through offshore affiliates. Consequently, clarification in this context does not benefit one party at the expense of Congress' policy objectives. It merely seeks to ensure that the regulations faithfully implement Congress' intent in a manner that does not beget unintended collateral consequences.

V. The Proposal

We believe there is a very simple, limited way for the agencies to provide clarification, as we discuss immediately below. We also discuss an alternative clarification the agencies could make, which also would resolve the issues with the Proposed Rule that have been discussed. Though both are acceptable approaches, we believe that the first proposal may represent a simpler solution in resolving the aforementioned problems with this exemption.

A. Suggested Proposal

We believe the final rule should unequivocally state that a foreign bank's acquisition or retention of any ownership interest in a covered fund pursuant to §__.13(c) shall not be prohibited because the covered bank's investment in such covered fund is directly or indirectly commingled with the investments of a resident of the United States, provided that the banking entity is not organizing or sponsoring, or offering or selling, such offshore covered fund to a resident of the United States.

If implemented in this purely passive context, the exemption would give effect to Congress' policy objectives without allowing foreign banks to evade other limitations in the Volcker Rule. Foreign banks would, for all other purposes, be:

- subject to all conditions of the exemption, including that investment not be conducted through U.S. branches or subsidiaries of the foreign bank[9];

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[9] *See, supra*, note 5.

- unable to sponsor, offer or sell covered funds to residents of the United States other than pursuant to Section 13(d)(1)(G) of the BHC Act, thereby putting them on equal footing with U.S. banks; and

- prohibited from engaging in proprietary trading or conduct that functions as an evasion of the Volcker Rule, because, in all cases, the foreign bank and any "controlled" covered fund remain a "banking entity" subject to its restrictions.

B. Alternative Proposal

We also believe the agencies could address the issue we have identified through an amendment to the definition of "banking entity".[10] Specifically, §__.2(e)(4)(i) could be amended to exclude from the term "banking entity" an entity or any fund that is a subsidiary or affiliate of a banking entity (and therefore itself a "banking entity") solely for the purpose of permitting such entity or fund to make an investment permitted pursuant to §__.13(c), provided, however, that such entity or fund otherwise meets the conditions in (1)(i), (1)(ii) and (1)(iv) except for (3)(iii) of §__.13(c) and provided further that the investment is in a fund that is not organized, sponsored or marketed by the investing entity or its affiliates.[11] This modification would allow a foreign banking entity to invest in an offshore covered fund, which covered fund could in turn invest in another fund that is commingled with the assets of U.S. residents.[12]

Modifying the definition of "banking entity" in this manner is still a simple, limited alternative that we believe can be structured to address the concerns regarding potential evasion of the Volcker Rule described above in Section V.A.

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[10] The definition of "banking entity" includes a company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978 and any affiliate or subsidiary of such a company, other than an affiliate or subsidiary that, *inter alia*, is a covered fund organized, offered and held by a banking entity pursuant to §__.11 or an entity controlled by such covered fund. §__.2(e).

[11] By omitting conditions (1)(iii) and (3)(iii) (i.e., no ownership interest in such covered fund be offered for sale or sold to a resident of the United States), this would address the issues we have described. We note that this would generally be a symmetric adjustment because a covered fund formed or organized pursuant to §__.11 is already excluded from the definition of "banking entity" and would, hence, not be prohibited from investing in other covered funds. However, we do not believe that simply excluding §__.13(c) funds from the definition of "banking entity" without the further clarifications we propose would go far enough. For example, in a structure involving multiple funds feeding into a common fund, as illustrated in Section III, U.S. tax exempt investors, such as pension plans, often invest in the offshore fund along with non-U.S. investors. The prohibition on offers or sales to U.S. residents currently in the exemption would appear to preclude or at least limit this possibility. If it is not expressly addressed, the offshore covered fund would have to be a special purpose vehicle with only foreign investors, making it more difficult for U.S. tax exempt investors to participate in this fund structure.

[12] We are cognizant of the additional restrictions placed on banking entities that rely on §__.11 to organize and offer a fund, but we do not believe they are relevant or should be applicable to the structure we describe. For example, such a banking entity would likely be limited to owning a 3% interest in a fund that it has sponsored. In our structure, the fund is being sponsored and advised by a manager that is unaffiliated with the foreign bank making the investment in the fund.

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We appreciate the opportunity to provide our comments. If you have any questions, please feel free to contact me at (312) 506-6500.

Sincerely,

Michael Sacks
Chief Executive Officer