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Email

Brussels, 06 January 2015

Attn: Mr Jonathan Faull
Director General
Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)
Rue de Spa 2
1000 Brussels
Belgium

Subject: Treatment of Foreign Non-covered Funds for Purposes of the Volcker Rule

Dear Mr Faull,

On behalf of the European Banking Federation¹ ("EBF") and the Institute of International Bankers ("IIB")², we would like to draw your attention to our deep concern about the extraterritorial impact the Volcker Rule will have on non-U.S. funds such as UCITs and other similar types of funds.³

We note with satisfaction the Federal Reserve Board's (FED) 18 December 2014 announcement in which it extended the conformance period for banking entities with regard to investments in and relationships with covered funds and foreign funds ("legacy covered funds"), so long as the investments or relationships were in place prior to 31 December 2013. The new deadline is 21 July 2016. Moreover, the FED also announced its intention to extend for an additional year, i.e. until 21 July 2017, the conformance period for banking entities to adjust ownership interests in and relationships with legacy covered funds. We believe the extension recognizes the difficulty of the challenges banking entities are encountering in seeking to conform their fund-related activities to the Volcker Rule's requirements.

While we welcome the FED's announcement, it does not provide any guidance on an important substantive issue that has been raised with the FED and the other U.S. Agencies: how the Volcker Rule's prohibitions on proprietary trading and fund investments might or might not apply on an extraterritorial basis to foreign public funds and "foreign non-covered private funds" (i.e., foreign private funds that are offered and sold exclusively to non-U.S. persons).

¹ Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

² The Institute of International Bankers is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

³ The Volcker Rule was enacted as Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and is implemented by the final rules adopted by the U.S. Agencies on 10 December 2013.

By way of background, the Volcker Rule's prohibitions against proprietary trading and sponsoring/investing in covered funds apply to "banking entities", a term which, as defined in the final rules, includes both foreign banks that maintain U.S. banking operations and U.S. and non-U.S. companies that are controlled by such banks. For these purposes, "control" is determined under the Bank Holding Company Act of 1956 ("BHCA") and may be exercised through a variety of means, including ownership of 25% or more of a class of voting shares of a company or governance arrangements. For example, acting as the general partner of a partnership or appointing a majority of a company's governing body constitutes "control" even in circumstances where there is minimal, or even no, economic interest in the company.

Notably, covered funds are excluded from the definition of banking entity; they therefore are not themselves subject to the Volcker Rule's proprietary trading and covered fund prohibitions. However, the definition of "covered fund" excludes foreign public funds and foreign non-covered private funds. Consequently, where the relationship between a foreign bank and a foreign public fund or foreign non-covered private fund would be characterized under the BHCA as enabling the foreign bank to exercise "control" over the fund, that fund would be treated as a "banking entity" under the Volcker Rule. The incongruous result is that BHCA-"controlled" foreign public funds and foreign non-covered private funds would be subject to the Volcker Rule proprietary trading and covered fund prohibitions even though covered funds themselves are not. As a practical matter, the Volcker Rule prohibitions would make it impossible for these non-U.S. funds to operate.

The extraterritorial reach of the Volcker Rule is extensive. Indeed, a survey conducted by the IIB on this subject indicates that a number of foreign public and foreign non-covered private funds that could be deemed to be "banking entities" for purposes of the Volcker Rule is substantial. The most recent numbers received by the IIB from the banks headquartered in EBF member countries (the EU and EFTA States) indicate that 4,624 foreign public funds and 2,273 foreign non-covered private funds might be considered "banking entities" under the Volcker Rule. We believe that these numbers significantly understate the full magnitude of the issue.

As explained in detail by the IIB in its separate letter to the U.S. Agencies on this issue (please find it attached for ease of reference (the EBF is also planning to send a letter concerning this issue to the relevant U.S. Agencies)), we believe it is within the Agencies' discretion under the Volcker Rule to conclude that foreign public funds and foreign non-covered private funds should not be treated as banking entities. Interpreting the Volcker Rule in this manner (i) achieves consistency with the Agencies' policy decision to reduce the extraterritorial impact of the Volcker Rule on foreign funds, (ii) addresses the incongruous result that these foreign funds would be subject to trading and investment restrictions that do not apply to covered funds (both inside and outside the United States), and (iii) avoids interference with and disruption of the core investment activities and strategies of these foreign funds as permitted under local law.

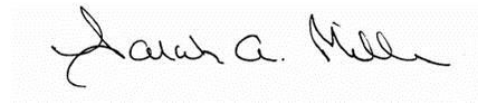
Considering the interconnectedness of the EU and U.S. financial markets and the possible negative impact on the EU financial sector, we believe that the Commission should raise this issue at the next Financial Market Regulatory Dialogue (FMRD) with the U.S., scheduled for the first half of January 2015.

Moreover, we would welcome an opportunity to meet and discuss these issues with you before the next FMRD takes place.

Yours sincerely,



Wim Mijs
Chief Executive
European Banking Federation



Sarah A. Miller
Chief Executive Officer
Institute of International Bankers

Cc: Mr Almorò Rubin De Cervin, Acting Head of Department, Financial services policy, Inter-institutional Relations and International affairs