



November 5, 2010

**Via Electronic Filing**

The Honorable Timothy F. Geithner  
Chairman  
Financial Stability Oversight Council  
1500 Pennsylvania, Ave., NW  
Washington, DC 20220

**Re: MFA Comments on Implementation of the “Volcker Rule”**

Dear Secretary Geithner:

Managed Funds Association (“MFA”)<sup>1</sup> appreciates the opportunity to comment on the Financial Stability Oversight Council’s (the “Council”) advance notice and request for information (the “Advance Notice”) on the implementation of section 619 of The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Section 619 of the Dodd-Frank Act imposes certain prohibitions on banking entities from engaging in proprietary trading and maintaining certain relationships with private investment funds (the “Volcker Rule”). Section 619 of the Dodd-Frank Act charges the Council with conducting a study and making recommendations to the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission and the Commodity Futures Trading Commission, which then must adopt rules to implement the Volcker Rule.

Private investment funds are the customers of and counterparties to banks and broker-dealers and we provide our comments to the Council in that context. We encourage the Council to implement the Volcker Rule in a manner that does not impede two important intermediary functions of banks and broker-dealers, market making functions in various assets and markets and distribution platforms for customers to invest in third-party private investment funds. We believe that both of these activities are outside of the scope of the intended limitations and prohibitions in the Volcker Rule and we urge the Council to develop recommendations that do not unintentionally limit these important market intermediary functions.

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<sup>1</sup> MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

Banks and broker-dealers play a critical role as market makers in our capital markets. Private investment funds, along with other investors and market participants, rely on market makers to ensure that there is sufficient liquidity in markets to engage in trading activities. To ensure that markets continue to have sufficient liquidity, we believe that it is critical for banks and broker-dealers to continue to be able to maintain sufficient levels of inventory and engage in appropriate hedging activities in connection with their market making functions. In this regard, it is important to note that maintaining appropriate inventory levels and engaging in hedging activities are both dynamic in nature and require some degree of flexibility in application. Further, with respect to hedging activities, it is critical that banks and broker-dealers be able to utilize imperfect hedges as part of their legitimate hedging activities, as it is not always possible to establish a perfect hedged position. We also note that the appropriate level of flexibility with respect to inventory levels and hedging activities is likely to vary depending the particular asset class and market. We believe that, without appropriate flexibility in the application of the Volcker Rule, market liquidity will be impaired, to the detriment of investors and our capital markets. Again, we believe that market making activities are not intended to be subject to the limitations in the Volcker Rule, and we encourage the Council not to adopt overly restrictive definitions or limitations on activities that could unintentionally constrain the important market making role played by banks and broker-dealers.

Many banks and broker-dealers set up distribution platforms that allow their customers to invest in private investment funds sponsored and managed by third parties. In this structure, the bank or broker typically establishes a pooled investment vehicle that will invest substantially all of its assets in the third-party private investment fund. The risks associated with this type of bank-managed feeder fund are borne entirely by the customers of the bank who are the investors in that feeder fund.<sup>2</sup> This type of distribution platform provides an important way for bank customers to invest in third-party private investment funds, without placing the bank's assets at risk. This distribution model also is important to many private investment funds that are owned and operated independently of banks or broker-dealers. We believe this distribution function is outside the scope of the type of activities intended to be subject to the Volcker Rule and we encourage the to ensure that its recommendations on implementation of the Volcker Rule do not unintentionally impair this important function.

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<sup>2</sup> In some circumstances, the bank may invest a *de minimis* amount of money as seed capital when it sets up the feeder vehicle.

## Conclusion

MFA appreciates the opportunity to provide comments on the Council's Advance Notice regarding implementation of the Volcker Rule. Private investment funds are customers of and counterparties to banks and broker-dealers and it is in this context that we encourage the Council to implement the Volcker Rule in a manner that does not impede two important intermediary functions of banks and broker-dealers, market making functions in various asset classes and distribution platforms for customers to invest in third-party private investment funds. If you have any questions regarding any of these comments, or if we can provide further information with respect to these or other regulatory issues, please do not hesitate to contact Stuart J. Kaswell or me at (202) 367-1140.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker  
President and CEO

CC: The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation  
The Honorable Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System  
Edward J. DeMarco, Acting Director, Federal Housing Finance Agency  
The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission  
The Honorable Debbie Matz, Chairman, National Credit Union Administration  
The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission  
John Walsh, Acting Comptroller of the Currency