July 17, 2019

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, also known as the Volcker Rule, added a new section 13 to the Bank Holding Company Act of 1956 (the "BHC Act") (codified at 12 U.S.C. 1851) that generally prohibits banking entities[1] from engaging in proprietary trading and from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund ("covered fund"). These prohibitions are subject to a number of statutory exemptions, restrictions, and definitions. The Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC," and together with the Board and the OCC, the "Banking Agencies"), the Securities and Exchange Commission (the "SEC"), and the Commodity Futures Trading Commission (the "CFTC," and together with the Banking Agencies and the SEC, the "Agencies") approved final rules implementing section 13 in 2013.[2]

A number of foreign banking entities, foreign government officials, and other market participants have expressed concern about the possible unintended consequences and extraterritorial impact of the Volcker Rule and implementing regulations for certain foreign funds ("foreign excluded funds") that are excluded from the definition of "covered fund" under section 13 and the Agencies' implementing rules with respect to a foreign banking entity. In particular, these parties have contended that certain foreign excluded funds may fall within the definition of "banking entity" under section 13 and implementing regulations if they are affiliates or subsidiaries of a foreign banking entity under the BHC Act. As a consequence, such funds would be subject to the requirements of section 13 and the Agencies' implementing rules imposed on banking entities, including compliance obligations, restrictions on proprietary trading, and restrictions on investing in or sponsoring covered funds.

The Banking Agencies released a policy statement on July 21, 2017 (the "2017 policy statement") in response to these concerns.[3] The 2017 policy statement provided that the staffs of the Agencies were considering ways in which the 2013 final rule could be amended, or other appropriate action that could be taken, to address any unintended consequences of section 13 and

---

[1] Unless otherwise defined, terms used in this statement have the same meaning as under section 13 and the implementing rules. *See infra* note 2.

[2] *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, 79 *Fed. Reg.* 5536 (January 31, 2014). These final rules are codified at 12 CFR part 44 (OCC), 12 CFR part 248 (FRB), 12 CFR part 351 (FDIC), 17 CFR part 75 (CFTC), and 17 CFR part 255 (SEC).

[3] Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170721a1.pdf.

the 2013 final rule for foreign excluded funds in foreign jurisdictions. Additionally, the 2017 policy statement provided that the Banking Agencies would not propose to take action during the one-year period ending July 21, 2018, against a foreign banking entity based on attribution of the activities and investments of a qualifying foreign excluded fund (as defined below) to the foreign banking entity, or against a qualifying foreign excluded fund as a banking entity, in each case where the foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund would meet the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and section __.13(b) of the Agencies' implementing rules, as if the qualifying foreign excluded fund were a covered fund.

On July 17, 2018, the Agencies published in the *Federal Register* a notice of proposed rulemaking and invited public comment on proposed revisions to the 2013 final rule.[4] The Agencies requested comment on the efficacy of the 2017 policy statement and other approaches that the Agencies could take to address the issue.[5] The notice also provided that the Agencies would not treat foreign excluded funds that meet the conditions included in the 2017 policy statement as banking entities, or attribute their investments or activities to the banking entity that sponsors or otherwise controls the fund, for an additional year, through July 21, 2019.[6]

Currently, the Agencies have not finalized any revisions to the regulations implementing section 13 of the BHC Act, including any revisions that may mitigate the concerns noted above regarding the treatment of qualifying foreign excluded funds (as defined below). To provide interested parties greater certainty about the treatment of qualifying foreign excluded funds in the near term, the Banking Agencies would not propose to take action during the two-year period ending July 21, 2021, against a foreign banking entity based on attribution of the activities and investments of a qualifying foreign excluded fund to the foreign banking entity, or against a qualifying foreign excluded fund as a banking entity, in each case where the foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund would meet the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and section __.13(b) of the Agencies' implementing rules, as if the qualifying foreign excluded fund were a covered fund.

For purposes of this statement, a "qualifying foreign excluded fund" means, with respect to a foreign banking entity, an entity that:

(1) Is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States;

(2) Would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises

---

[4] *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, 83 *Fed. Reg.* 33432 (July 17, 2018).

[5] 83 *Fed. Reg.* 33445.

[6] 83 *Fed. Reg.* 33444.

money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables the foreign banking entity to evade the requirements of section 13 or implementing regulations.

The Banking Agencies have consulted with the staffs of the SEC and CFTC regarding this matter.

Nothing in this statement restricts in any way the authority of any Agency to use its supervisory or other authority to limit any activity the Agency determines to be unsafe or unsound or otherwise in violation of law.