

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

Docket ID OCC-2011-14

Submitted by : Alfred Brock



Number of Specific Questions for Comment Responding to : 218

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Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds for submittal regarding these items : Docket ID OCC-2011-14 and Docket No. R-1432 and RIN 7100 AD 82 and File Number S7-41-11

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The following are my comments on a proposed rule that would implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain

interests in, or relationships with, a hedge fund or private equity fund.

Question 1. Does the proposed effective date provide banking entities with sufficient time to prepare to comply with the prohibitions and restrictions on proprietary trading and covered fund activities and investments? If not, what other period of time is needed and why?

Yes the proposed effective date provides banking entities with sufficient time to prepare to comply and then actually comply with the prohibitions and restrictions on proprietary trading and covered fund activities and investments.

Question 2. Does the proposed effective date provide banking entities with sufficient time to implement the proposal's compliance program requirement? If not, what are the impediments to implementing specific elements of the compliance program and what would be a more effective time period for implementing each element and why?

The proposed effective date provides banking entities with sufficient time to implement the proposal's compliance program requirement especially in view of the fact that many of the proscribed behaviors and activities can be forgiven on an individual basis by the regulating authorities.

That is a problem that should be addressed. There should be no allowances for avoiding the prohibitions and restrictions.

Question 3. Does the proposed effective date provide banking entities sufficient time to implement the proposal's reporting and recordkeeping requirements? If not, what are the impediments to implementing specific elements of the proposed reporting and recordkeeping requirements and what would be a more effective time period for implementing each element and why?

The proposed effective date provides banking entities sufficient time to implement the proposal's reporting and recordkeeping requirements because these records are already being kept in one form or another by the banking entities.

The problem is the manner in which they will be collected and scrutinized by the Federal and State Agencies that will be drawn into this charade. The banking entities need to cease proprietary trading and covered fund activities and investments

Question 4. Should the Agencies use a gradual, phased in approach to implement the

statute rather than having the implementing rules become effective at one time? If so, what prohibitions and restrictions should be implemented first? Please explain.

No, the Agencies should not use a gradual, phased in approach to implement the statute. The Agencies need to implement the statute immediately.

It is recommended, however, that an outside Agency, like the Government Accounting Office, be set immediately to review the activities of the Agencies in order to determine if there are any plans for hiring more workers to carry out the work they should have been doing all along.

It is also recommended that the Government Accounting Office be set to ensure that the Agencies are not overlapping in their responsibilities and creating double or triple work while reducing efficiency in their own operations.

Question 5. Is the proposed rule's definition of banking entity effective? What alternative definitions might be more effective in light of the language and purpose of the statute?

The proposed rule's definition of a banking entity appear to be effective. If any clarification needs to be made by the Agencies at this time it is again a matter for the Government Accounting Office to look into.

Question 6. Are there any entities that should not be included within the definition of banking entity since their inclusion would not be consistent with the language or purpose of the statute or could otherwise produce unintended results? Should a registered investment company be expressly excluded from the definition of banking entity? Why or why not?

There are no entities currently identified in the statute that should not be included. As for a registered investment company – if it is operating as a bank or owns a bank or is controlled by a bank then that this is a forbidden operation.

It is recommended that Finance Companies that are operated by industrial companies like GE Financial, GM, Ford and Chrysler Automotive also be included as their activities often cross back and forth between providing financial services for the company to selling and controlling bonds issues, stocks and running banking and investment services.

Question 7. Is the proposed rule's exclusion of a covered fund that is organized, offered and held by a banking entity from the definition of banking entity effective? Should the

definition of banking entity be modified to exclude any covered fund? Why or why not?

The proposed rule's exclusion of a covered fund offered and held by a banking entity from the definition of a banking entity is not effective if it means that the bank may hold that fund and profit from it or cause it to profit from the operations of the bank or knowledge and information that the bank has.

The definition of banking entity should not be modified any more than it has been.

Question 8. Banking entities commonly structure their registered investment company relationships and investments such that the registered investment company is not considered an affiliate or subsidiary of the banking entity. Should a registered investment company be expressly excluded from the definition of banking entity? Why or why not? Are there circumstances in which such companies should be treated as banking entities subject to section 13 of the BHC Act? How many such companies would be covered by the proposed definition?

The main purpose and intention of the statute appears to be to a reasonable individual to stop banks from running registered investment companies – so even though on paper it is not an affiliate or subsidiary of the bank they have been acting that way with the result that our financial and economic house has been thrown into disarray.

A registered investment company, if it is doing business closely with a bank or was created by the bank to perform certain functions, or if the registered investment company creates a bank to perform certain functions – that is apparently disallowed under the statute. Any attempt by the Agencies to avoid this important work should be acknowledged by the Agencies so that the American public can see how poorly they are being served.

Question 9. Under the proposed rule, would issuers of asset-backed securities be captured by the proposed definition of “banking entity”? If so, are issuers of asset-backed securities within certain asset classes particularly impacted? Are particular types of securitization vehicles (trusts, LLCs, etc.) more likely than others to be included in the definition of banking entity? Should issuers of asset-backed securities be excluded from the proposed definition of “banking entity,” and if so, why? How would such an exclusion be consistent with the language and purpose of the statute?

Issuers of asset-backed securities – like those used in industry to finance development are not banking entities. However, if the banking entity of an industrial company like GE, GM, Ford or Chrysler – insists on providing this service then they should be prohibited from doing it. Reasonable valuation of funds and property owned

by and financed by a company like GE, GM, Ford or Chrysler will not be correctly valued by that company for itself. The result is clear with what happened with the billions in worthless bonds issued by General Motors.

In that case they actually sold worthless bonds to their employees through direct debit from their check.

That is the sort of behavior the Agencies are charged with stopping.

Question 10. What would be the potential impact of including existing issuers of assetbacked securities⁸³ in the proposed definition of “banking entity” on existing issuers of assetbacked securities and the securitization market generally? How many existing issuers of assetbacked securities might be included in the proposed definition of "banking entity"? Are there ways in which the proposed rule could be amended to mitigate or eliminate potential impact, if any, on existing asset-backed securities⁸⁴ without compromising the intent of the statute?

The potential impact on including existing issuers of asset-backed securities (and please note the Agencies have spelled ‘asset-backed’ in two different ways in this document) is less than the damage that will be done by allowing them to continue on their careening path.

The question of how many existing issuers of asset-backed securities might be included in the proposed definition of “banking entity” is surprising to me. Which of the companies and individuals asked this question would have the answer? Is the question directed at city, state or national level? Any private company having the correct answer to this question would have to be asked how they came about that information. As for the Agencies asking this question – it is clear that their grasp of the situation or their willingness and ability to work with it is seriously lacking.

Question 11. What would be the legal and economic impact to an issuer of asset-backed securities of being considered a "banking entity"? What additional costs would be incurred in the establishment and implementation of a compliance program related to the provisions of the proposed rule as required by § __.20 of the proposed rule (including Appendix C, where applicable)? Who would pay those additional costs?

There is no way to determine the legal and economic impact to an issuer of asset-backed securities of being considered a ‘banking entity’. The costs for allowing these companies to continue behaving any way they please has already been made evident.

This question, in my opinion, appears to be a leading question. In any case the establishment of a compliance program only serves to benefit the Agencies or any individual Agency and provides opportunity not only for confusion imposed on financial workers but opens the very real possibility of malfeasance. If the banking entity is not behaving properly there is no reason to believe they would expose themselves by

submitting documents proving it on a regular basis through a compliance program. This is not a reasonable response to the difficulty.

This question causes me to question the intent of these proceedings. Clearly these activities must be stopped but to ask how much they might cost if they are stopped – after they have cost this nation trillions of dollars through lost productivity, bail-outs and loss of good faith – is an indication that the Agencies may not be predisposed to carrying out the work that has been put forth for them to do.

Question 12. If the ownership requirement under the proposed rule for credit risk retention (section 15G of the Exchange Act) combined with the control inherent in the position of servicer or investment manager means that more securitization vehicles would be considered affiliates of banking entities, would fewer banking entities be willing to (i) serve as the servicer or investment manager of securitization transactions and/or (ii) serve as the originator or securitizer (as defined in section 15G of the Exchange Act) of securitization transactions? What other impact might the potential interplay between these rules have on future securitization transactions? Could there be other potential unintended consequences?

There is no reason to believe that the ownership requirement under the proposed rule would decrease the likelihood that banking entities would service or act as investment managers of securitization transaction. In fact the business may increase and competition would weed out the incompetent because rather than performing the work as if they are on a factory floor churning out what is necessary in order for the bank to produce a paper profit – the financial workers would be required to assist in the work that would bring out correctly securitized transactions. The banks would take the place that is reserved for them and be removed from operations in which they cannot continue to operate in without tainting the product.

This question seems to misunderstand the process for originating and securitizing business transactions for the benefit of business. I cannot put my finger on it definitively but it seems that the way this question is framed it seems like the Agencies have either become comfortable with the disoriented status quo or they lack the experience and knowledge of banking and investment that would make such a question unnecessary.

As for what other impacts might the potential interplay between these rules have on future securitization transactions – that is an open ended question. There is no correct answer for it. Anyone can claim it will have negative impacts or positive impacts. The destruction has already been made by not having the rule in place. The impact of the rule will be to bring order out of the purposeful chaos that has erupted around us.

Question 13. Are the proposed rule's definitions of buy and purchase and sale and sell appropriate? If not, what alternative definitions would be more appropriate? Should any other terms be defined? If so, are there existing definitions in other rules or regulations that could be used in this context? Why would the use of such other definitions be appropriate?

The proposed rule's definitions of buy and purchase and sale and sell are appropriate. There are no alternative definitions necessary at this time. There are none in current use that would be more appropriate. No other terms should be defined. There are no other existing definitions in other rules or regulations that could be used in this context – those being used are sufficient and meet the need. The use of other definitions, in fact, would not be appropriate. It would be an abridgement of logic and would cause undue confusion the like of which we see all around the financial industry at this time.

The Agencies request comment on the proposed rule's approach to defining trading account. In particular, the Agencies request comment on the following questions:

Question 14. Is the proposed rule's definition of trading account effective? Is it over- or under-inclusive in this context? What alternative definition might be more effective in light of the language and purpose of the statute? How would such definition better identify the accounts that are intended to be covered by section 13 of the BHC Act?

The proposed rule's definition of 'trading account' is effective and precise. It is neither over- or under-inclusive in this context. There is no alternative definition that might be more effective in light of the language and purpose of the statute. There is no reason believe that such definition would better identify the accounts intended to be covered by section 13 of the BHC Act.

Question 15. Is the proposed rule's approach for determining when a position falls within the definition of "trading account" for purposes of the proposed rule from when it must be reported in the "trading account" for purpose of filing the Call Report effective? What additional guidance could the Agencies provide on this distinction? Are there alternative approaches that would be more effective in light of the language and purpose of the statute? Is this approach workable for affiliates of bank holding companies that are not subject to the Federal banking agencies' market Risk Capital Rules (e.g., affiliated investment advisers)? If not, why not? Are affiliates of bank holding companies familiar with the concepts from the Market Risk Capital Rules that are being incorporated into the proposed rule? If not, what steps would an affiliate of a bank holding company have to take to become familiar with these concepts and what would be the costs and/or benefits of such actions? Is application of the trading account concept from the Federal banking agencies' Market Risk Capital Rules to affiliates of bank holding companies necessary to promote consistency and prevent regulatory arbitrage? Please explain.

It is apparent that there are more questions than are listed. Many of these questions contain several questions.

As for Question 15 - the proposed rule's approach for determining when a position falls within the definition of "trading account" for purposes of the proposed rule from when it must be reported in the "trading account" for purpose of filing the Call Report is quite effective.

There is no reason for the Agencies to provide any guidance at all on this distinction. At this time and time forward it is strongly recommended that the Agencies confine themselves to their duties and actually carry them out rather than interfering in rule making procedures designed to partially correct their own errant ways.

This approach is workable for bank holding companies not subject to the Federal banking agencies' market Risk Capital Rules.

Most of the affiliates of bank holding companies should be, like most American citizens are familiar with the concepts from the Market Risk Capital Rules that are being incorporated into the proposed rule. If they are not it is a simple matter to inform them of them by simple notice.

Application of the trading account concept from the Federal banking agencies' Market Risk Capital Rules to affiliates of bank holding companies is not necessary to promote consistency. As for preventing regulatory arbitrage it is strongly advised that the Agencies be reduced in size and their duties more closely scrutinized moving forward. Much of the blame for the present state of financial disarray can be traced to the Agencies' own actions and inaction – if you seek example then consider Fannie Mae and Freddie Mac and the position they have taken in the financial industry. It is because of assistance from and neglect of oversight by the Agencies that those two governments sponsored enterprises rode roughshod over logic and foresight nearly catapulting the entire nation's economic livelihood into a ditch from which we would not have been able to climb out of.

Question 16. Is the manner in which the Agencies intend to take into account, and substantially adopt, the approach used in the Market Risk Capital Rules and related concepts for determining whether a position is acquired with short-term trading intent effective?

The manner in which the Agencies intend to take into account, and substantially adopt, the approach used in the Market Risk Capital Rules and related concepts for determining whether a position is acquired with short-term trading intent effective. If, however, there are changes in the methods that the Agencies intend to use then serious problems including abuse may occur. The best way to ensure that failure does not occur is to choose one Agency and one Agency alone to determine whether a position is acquired with short-term trading intent. The way it is proposed now can lead to one or more agencies having one more positions on a simple matter.

That is contrary to the intent of the statute and should be avoided.

The difficulty is in the bureaucratic structure of the Agencies. They coalesce, as they are doing now, when it is convenient to slow or change a course of events that can threaten their existence while not providing any improved level of service to the citizens of the United States.

Question 17. Should the proposed rule’s definition of trading account, or its use of the term “short-term,” be clarified? Are there particular transactions or positions to which its application would be unclear? Should the proposed rule define “short-term” for these purposes? What alternative approaches to construing the term “short-term” should the Agencies consider and/or adopt?

The proposed rule’s definition of trading account, or its use of the term “short-term,” should not be clarified any further. The Agencies, with this question, are echoing the famous statement by Bill Clinton before a Grand Jury - ““It depends on what the meaning of the word 'is' is.”

The question “Are there particular transactions or positions to which its application would be unclear?” would be totally dependent on the meaning of phrase and in this case on which of the Agencies is using the term.

I do not think there should be any further definitions for “short-term”.

We then arrive at the question, “What alternative approaches to construing the term “short-term” should the Agencies consider and/or adopt?” This question again makes me wonder if large parts of this questioning process are intended to be a stalling game. The first question in Question 17 was enough – further attempts at clarifying the question tend to confuse the matter even further to the point of absurdity.

Question 18. Are there particular transactions or positions to which the application of the proposed definition of trading account is unclear? Is additional regulatory language, guidance, or clarity necessary?

There are no presently available transactions or positions to which the application of the proposed definition of trading account is unclear. There is no need for additional regulatory language.

The point of the statute is to terminate the flights of fancy that have taken hold in the marketplace and have so badly infected the Agencies that the employees at the Agencies are now being led by experience in the market rather than by financial necessity.

There is no reason that a bank should own a company or farm work to a closely integrated company that would take all the loans it is writing – often with fanciful information in order to make the loans appear legitimate – and then tie those loans up into securities which are then rated by closely related ratings companies that are paid for the service by the companies or banks and then offer those securities to the general public for sale.

What needs to be clarified is which one of the Agencies will be driven from its regulatory position and back to reality first.

Question 19. Is the exchange of variation margin as a potential indicator of short-term

trading in derivative or commodity future transactions appropriate for the definition of trading account? How would this impact such transactions or the manner by which banking entities conduct such transactions? For instance, would banking entities seek to avoid the use of variation margin to avoid this rule? What are the costs and benefits of referring to the exchange of variation margin to determine if positions should be included in a banking entity's trading account? Please explain.

The exchange of variation margin can be considered more than a potential indicator of short-term trading in derivative or commodity future transactions so it is appropriate for the definition of trading account.

It would impact such transactions or the manner by which banking entities conduct such transactions in such a way as to ensure that unfair business practices, restriction of trade, forgery and incompetence are forced from the market.

It may well be that banking entities would seek to avoid the use of variation margin to avoid this rule and that would be a good thing. If they just change the name of what they are doing and use different forms to do it as they have been doing with many other regulations then that would be a bad thing.

There are no true additional costs and benefits of referring to the exchange of variation margin to determine if positions should be included in a banking entity's trading account. It should just be done.

It should be done to ensure that criminal activity and incompetence are driven from the marketplace instead of encouraged as the Agencies seem to have been doing.

Question 20. Are there particular transactions or positions that are included in the definition of trading account that should not be? If so, what transactions or positions and why?

There are no particular transactions or positions that are included in the definition of trading account that should not be.

Question 21. Are there particular transactions or positions that are not included in the definition of trading account that should be? If so, what transactions or positions and why?

There are no particular transactions or positions that are not included in the definition of trading account that should be

Question 22. Is the proposed rule of construction for positions acquired or taken by

dealers, swap dealers and security-based swap dealers appropriate and consistent with the purpose and language of section 13 of the BHC Act? Is its application to any particular type of entity, such as an insured depository institution engaged in derivatives dealing activities, sufficiently clear and effective? If not, what alternative would be clearer and/or more effective?

The proposed rule of construction for positions acquired or taken by dealers, swap dealers and security-based swap dealers appropriate and consistent with the purpose and language of section 13 of the BHC Act.

Its application to any particular type of entity, such as an insured depository institution engaged in derivatives dealing activities, is sufficiently clear and effective.

Question 23. Is the rebuttable presumption included in the proposed rule appropriate and effective? Are there more effective ways in which to provide clarity regarding the determination of whether or not a position is included within the definition of trading account? If so, what are they?

The rebuttable presumption included in the proposed rule is appropriate and effective.

There are no more effective ways in which to provide clarity regarding the determination of whether or not a position is included within the definition of trading account.

Question 24. Are records currently created and retained that could be used to demonstrate investment or other non-trading purposes in connection with rebutting the presumption in the proposed rule? If yes, please identify such records and explain when they are created and whether they would be useful in connection with a single transaction or a category of similar transactions. If no, we seek commenter input regarding the manner in which banking entities might demonstrate investment or other non-trading intent. Should the Agencies require banking entities to make and keep records to demonstrate investment or non-trading intent with respect to their covered financial positions?

If there are records that could potentially be used to demonstrate investment or non-trading purposes in connection with rebutting the presumption (the rebuttal presumption) in the proposed rule then they would need to be introduced in a court of law so that judge or judge and jury can decide if they rebut the presumption that : "...any account used to acquire or take a covered financial position that is held for sixty days or less is a trading account under the first prong, unless the banking entity can demonstrate that the position was not acquired principally for short-term trading purposes...". Question 24 either appears to be a fishing expedition by the Agencies or representatives of the Agencies to attempt to undermine the rule or it demonstrates again why this rule must be put in place as the Agencies have lost all contact with financial realities.

As for the no portion of the question – it is not clear what the Agencies are asking for in regards to producing evidence of items that do not exist – apparently the Agencies are seeking suppositions and imaginative answers to their question rather than facts and information that can be used to make a correct determination.

As for the Agencies requiring banking entities to make and keep records to demonstrate investment or non-trading intent with respect to their covered positions – banking entities need to be excluded from this behavior in the first place. In the second place they should keep records so that when they are brought to court for violating the order it will be easier to prosecute and fine them for their abrogation of their financial duties.

The second part of the question regarding whether or not banking entities should keep records of these transactions is like asking whether or not pharmacies should keep track of their purchases and sales of controlled substances. If we look at the question from a wider perspective and consider that the Agencies are wondering if banking entities should keep records on illegal activities then the answer is a qualified 'YES' – but it will be hard to convince them to do so just as it hard to convince drug dealers to keep records of their transactions.

Question 25. How should the proposed trading account definition address arbitrage positions? Should all arbitrage positions be included in the definition of trading account, unless the timing of such profits is long-term and established at the time the arbitrage position is acquired or taken? Please explain in detail, including a discussion of different arbitrage trading strategies and whether subjecting such strategies to the proposed rule would be consistent with the language and purpose of section 13 of the BHC Act.

The proposed trading account definition should not be changed.

Arbitrage positions should not be included in the definition of a trading account as it is an activity that is already regulated.

This question is misleading is introducing language and purpose not intended.

The Agencies are attempting to separate arbitrage as a unique and special activity when it is an integrated process within the financial industries. That should be clear to the Agencies.

The Agencies need to explain in detail what their present definition of arbitrage is or why they do not understand what it is.

Question 26. Is the holding period referenced in the rebuttable presumption appropriate? If not, what holding period would be more appropriate, and why?

The holding period referenced in the rebuttal presumption is appropriate.

There is no other holding period that would be more appropriate and the reason is that the holding period referenced in the rebuttal presumption is appropriate.

Also – please note that in Question 26 the word 'rebuttal' has been incorrectly spelled as 'rebuttable'.

That is regrettable.

Question 27. Should the proposed rule include a rebuttable presumption regarding positions that are presumed not to be within the definition of trading account? If so, why, and what would the presumption be?

The proposed rule should not include a rebuttal presumption regarding positions that are not presumed to be within the definition of the trading account.

Question 28. Should any additional accounts be included in the proposed rule pursuant to the authority granted under section 13(h)(6) of the BHC Act? If so, what accounts and why? For example, should accounts used to acquire or take certain long-term positions be included in the definition? If so, how would subjecting such accounts to the proposed rule's prohibitions and restrictions be consistent with the language and purpose of section 13 of the BHC Act?

No additional account should be included in the proposed rule pursuant to the authority granted under section 13(h)(6) of the BHC Act.

Question 29. Do any of the activities currently engaged in by issuers of asset-backed securities that would be considered a banking entity constitute proprietary trading as defined by § __.3(b) of this rule proposal? Would any activities relating to investment of funds in accounts held by issuers of asset-backed securities (e.g., reserve accounts, prefunding accounts, reinvestment accounts, etc.) or the purchase and sale of securities as part of the management of a collateralized debt obligation portfolio be considered proprietary trading under the proposed rule? What would be the potential impact of the prohibition on proprietary trading on the use of such accounts in (i) existing securitization transactions and (ii) future securitization transactions? Would any of the securities typically acquired and retained using these accounts be considered an ownership interest in a covered fund under the proposed rule? Does the exclusion of trading in certain government obligations in § __.6(a) of the proposed rule mitigate the impact of the proposed rule on such issuers of asset-backed securities and their activities? Why or why not?

Please note that in Question 29 the word 'accounts' has been misspelled as 'accountts'.

The first question in this multi-part question asks for activities currently engaged in by banking entities. I fail to see the importance of this question as the fact that the Act has come into being is because some of the banking entities have been conducting these activities and they must STOP.

Some of the activities related to investment of funds in accounts held by asset-backed securities would be considered proprietary trading if they were carried out by

banking entities. It seems the Agencies are seeking to avoid their responsibilities, do not agree with the Act or are shot through with incompetence as regards this question.

The potential impact on the use of such accounts in existing transactions would force them to be converted. The banking entities must STOP now. Some of the securities typically acquired and retained (during the time it was legal to do so) would be considered an ownership interest in a covered fund if they are owned and in a covered fund.

The interest in mitigating the impact of the proposed rule on anyone or any entity seems misplaced and out of step with the duties of the Agencies. Just as the separation of Church and State must be maintained the separation of bad business practices and government finances must be maintained at all costs.

Question 30. Are the proposed clarifying exclusions for positions under certain repurchase and reverse repurchase arrangements and securities lending transactions over- or under-inclusive and could they have unintended consequences? Is there an alternative approach to these clarifying exclusions that would be more effective? Are the proposed clarifying exclusions broad enough to include bona fide arrangements that operate in economic substance as secured loans and are not based on expected or anticipated movements in asset prices? Are there other types of arrangements, such as open dated repurchase arrangements, that should be excluded for clarity and, if so, how should the proposed rule be revised? Alternatively, are the proposed clarifying exclusions narrow enough to not inadvertently exclude from coverage any similar arrangements or transactions that do not have these characteristics?

The proposed clarifying exclusions have been correctly defined and set forth in the Act.

As for being over- or under-inclusive – no specifics have been offered by the Agencies so the question is without merit. As for having unintended consequences – are the Agencies asking individuals and corporations to attempt to create an alternate future that can be examined from the perspective of it being the past so that the question can be answered? We are only at Question 30 and it is becoming apparent from the questions posed by the Agencies why the American financial system has degraded to such a state of confusion and utter neglect.

There are no alternative approaches to these clarifying exclusions that would be more effective.

The proposed clarifying exclusions are broad enough to include bona fide arrangements that operate in economic substance as secured loans and are not based on expected or anticipated movements in asset prices.

There are no other types of arrangements, such as open dated repurchase arrangements, that should be excluded for clarity.

The proposed rule should not be revised.

The proposed clarifying exclusions are narrow enough to not inadvertently exclude from coverage any similar arrangements or transactions that do not have these characteristics – that is quite clear in the wording of the Act.

Question 31. Are repurchase and reverse repurchase arrangements and securities lending transactions sufficiently similar that they should be treated in the same way for purposes of the proposed rule? Are there aspects of repurchase and reverse repurchase arrangements or securities lending transactions that should be highlighted in considering the application of the proposed rule? Do repurchase and reverse repurchase arrangements or securities lending transactions raise any additional or heightened concerns regarding risk? Please identify and explain how these concerns should be reflected in the proposed rule.

Whether repurchase and reverse repurchase arrangements and securities lending transactions sufficiently similar that they should be treated in the same way for purposes of the proposed rule is not a question of consequence. The wording of the Act is sufficient in this regard.

There are no aspects of repurchase and reverse repurchase arrangements or securities lending transactions that should be highlighted in considering the application of the proposed rule.

Repurchase and reverse repurchase arrangements or securities lending transactions do not raise any additional or heightened concerns regarding risk unless a banking entity has entered into the actions in defiance of the rule.

There are no additional concerns concerning these items that should be reflected in the proposed rule.

Question 32. Are the proposed exclusions for repurchase and reverse repurchase arrangements and securities lending transactions appropriate or are there conditions that commenters believe would be appropriate as a pre-requisite to relying on these exclusions? Please identify such conditions and explain. Alternatively, we seek commenter input regarding why repurchase and reverse repurchase arrangements and securities lending transactions do not present the potential for abuse, namely, that a banking entity might attempt to improperly mischaracterize prohibited proprietary trading as activity that qualifies for the proposed exclusions.

Clearly the proposed exclusions for repurchase and reverse repurchase arrangements and securities lending transactions are appropriate or there are not conditions that would be appropriate as a pre-requisite to relying on these exclusions.

If a banking entity abuses repurchase and reverse repurchase arrangements and securities lending transactions by improperly mischaracterizing prohibited proprietary trading as activity that qualifies for the proposed exclusions then that banking entity would need to be broken up and its principal officers and all those involved jailed for a time and barred from the financial industries for life. It is quite simple.

Question 33. Is the proposed clarifying exclusion for liquidity management transactions effective and appropriate? If not, what alternative would be more effective and appropriate, and why? Is the proposed exclusion under- or over-inclusive? Does the proposed clarifying exclusion place sufficient limitations on liquidity management transactions to prevent abuse of the clarifying exclusion? If not, what additional limitations should be specified? Are any of the limitations contained in the proposed rule inappropriate or unnecessary? If so, how could such limitations be eliminated or altered in way that does not permit abuse of the clarifying exclusion? Question 34: Is the proposed exclusion for liquidity management positions necessary? If not excluded, would such activity otherwise qualify for an exemption contained in the proposed rule (e.g., the exemptions contains in §§ __.5 and __.6(a) of the proposed rule)? What types of banking entities are likely to engage in the liquidity management activities described in the proposed exclusion?

The proposed clarifying exclusion for liquidity management transactions is effective and appropriate.

The proposed exclusion is neither under- or over-inclusive – just like ‘Baby Bear’s Porridge’ in the fairy tale ‘Goldilocks and the Three Bears.’

The proposed clarifying exclusion places sufficient limitations on liquidity management transactions to prevent abuse of the clarifying exclusion.

There are no limitations contained in the proposed rule which are inappropriate or unnecessary.

Question 34: Is the proposed exclusion for liquidity management positions necessary? If not excluded, would such activity otherwise qualify for an exemption contained in the proposed rule (e.g., the exemptions contains in §§ __.5 and __.6(a) of the proposed rule)? What types of banking entities are likely to engage in the liquidity management activities described in the proposed exclusion?

The proposed exclusion for liquidity management positions is necessary

Question 35: What types of instruments do particular types of banking entities currently use in connection with liquidity management activities (e.g., Treasuries)? Why are such instruments chosen for liquidity management purposes? Would such instruments meet the proposed requirement that the position be highly liquid and limited to financial instruments the market, credit and other risk of which are not expected to give rise to appreciable profits or losses as a result of short-term price movements? Why or why not?

There are many types of instruments that particular types of banking entities currently use in connection with liquidity management activities – they include Treasuries, commodities, bonds, stocks, asset backed securities, cash, real estate...

Such instruments are chosen for liquidity management purposes in order to provide liquidity management. Is this a first year economics lesson or is it an opportunity for American citizens to honestly and professionally comment upon this necessary proposed rule?

Some of the instruments would meet the proposed requirement that the position be highly liquid and limited to financial instruments. Some would not – depending on their use and the manner and purpose for which they were acquired which is the root purpose of the Act.

The reason why is because that because some of the instruments would meet the proposed requirement that the position be highly liquid and limited to financial instruments. Some would not – depending on their use and the manner and purpose for which they were acquired.

Question 36: What methodologies do banking entities currently use for estimating deviations from normal operations in connection with liquidity management programs?

The methodologies that banking entities currently use for estimating “deviations from normal operations” in connection with liquidity management programs or anything would be normal accounting procedures. If something is deviating then the banking entity would be able to discern that from their normal accounting procedures. If the situation had not gone too far they could correct it to restore profitability.

The worth of Question 36 is questionable, at best.

Question 37: Which unit or units within a banking entity are typically responsible for liquidity management? What is the typical reporting line structure used to control and supervise that unit or units? Are the responsibilities of personnel in the unit limited to liquidity management or do they perform other functions in addition to liquidity management? How is compensation determined for personnel in the unit of the banking entity responsible for liquidity management?

The unit or units within a banking entity are typically responsible for liquidity management would be the one(s) assigned that function. The name of the department or the responsibilities of the department or function would be part of the operating procedures of the banking entity.

When processing chicken parts does it matter what the name of the floor operation is called when the USDA or FDA inspector comes to ensure that everything is clean and hygienic?

As for what the typical reporting line structure used to control and supervise

that unit or units would be obviously would be determined by the normal operating procedures of the company.

As for the responsibilities of personnel in the unit being limited to liquidity management or do they perform other functions in addition to liquidity management this also would be determined by how the individual banking entity is doing business.

The Agencies seem to be seeking some institutional structure that they have heretofore been unaware of. If the banking entities are carrying out forbidden activities they must stop. If the behavior is widespread and rampant – as it appears to be – it must cease. Pretending it is okay because someone put a label on it is not reasonable.

The compensation would determined for personnel in the unit of the banking entity responsible for liquidity management according to internal decisions made at the banking entity. If, in fact, payments are made to individuals for carrying out restricted, illegal or improper activities at any banking entities then that would be cause for sanction and fines along with possible jail time. The casual interest being shown by the Agencies in Question 37 cause me to believe that they are not seriously intent on ensuring that the Act is enforced.

Perhaps because they do not understand the intent or perhaps because the Agencies themselves have contributed directly to the current financial problems of the United States of America, its citizens and businesses by their own rogue behavior and the wild behavior of their employees and associates.

Question 38: Would current liquidity management programs meet the five proposed criteria for liquidity management programs? If not which criteria would not be met, and why? What effect would the proposed liquidity management exclusions have on current liquidity management programs and banking entities in general?

Current liquidity management programs meet the five proposed criteria for liquidity management programs.

The effect of the proposed liquidity management exclusions on current liquidity management programs and banking entities in general which are following the law and have not wandered into illegal, unethical or foolish behavior in their business dealings (as many of the large companies have done) would be null. There would be no effect. On those companies that have wandered into illegal, unethical or foolish behavior in their business dealings the effect might be to chill or eliminate their illegal, unethical or foolish behavior. It might also have no effect on those companies which are carry out illegal, unethical or foolish behavior and then the effect might be to hurry them to jail and out business where they belong.

Question 39: Are liquidity management programs used for purposes other than ensuring the banking entity has sufficient assets available to it that are readily marketable to meet expected short-term liquidity needs? If so, for what purposes, and why?

Liquidity management programs may sometimes be used for purposes other than ensuring the banking entity has sufficient assets available to it that are readily marketable to meet expected short-term liquidity needs. The purpose would be to make money. The why would be answered, 'In order to ensure a profit from all means possible.'

Question 40: What costs or other burdens would arise if the proposal did not contain an exclusion for positions acquired or taken for liquidity management purpose? Please explain and quantify these costs or other burdens in detail.

No costs or other burdens would arise if the proposal did not contain an exclusion for positions acquired or taken for liquidity management purpose.

Question 41: Is the proposed liquidity management exclusion sufficiently clear? If not, why is the exclusion unclear and how should the Agencies clarify the terms of this exclusion?

The proposed liquidity management exclusion is sufficiently clear. The Agencies should make no changes or independent translation of any part of the Act.

Question 42. Is the proposed clarifying exclusion for certain positions taken by derivatives clearing organizations and clearing agencies effective and appropriate? If not, what alternative would be more effective and appropriate, and why?

The proposed clarifying exclusion for certain positions taken by derivatives clearing organizations and clearing agencies is effective and appropriate.

Question 43. Are any additional clarifying exclusions warranted? If so, what clarifying exclusion, and why?

There are not any additional clarifying exclusions warranted.

Question 44. Should the proposed definition exclude any position the market risk of which cannot be hedged by the banking entity in a two-way market?¹¹⁶ If so, what would be the basis for concluding that such positions are clearly not within the statutory definition of trading account?

The proposed definition should not be changed in any fashion by the Agencies or requested to be changed by the Agencies.

Question 45. Should the proposed definition include a clarifying exclusion for any position in illiquid assets? If so, what would be the basis for concluding that such positions are clearly not within the statutory definition of trading account? How should “illiquid assets” be defined for these purposes? Should the definition be consistent with the definition given that term in the Board’s Conformance Rule under section 13 of the BHC Act (12 CFR 225.180 et seq.)?

The proposed definition should not include a clarifying exclusion for any position in illiquid assets.

Question 46. Is the proposed rule’s definition of covered financial position effective? Is the definition over- or under-inclusive? What alternative approaches might be more effective in light of the language and purpose of section 13 of the BHC Act, and why?

The proposed rule’s definition of covered financial position effective. The definition is neither over- or under-inclusive. There are no reasonable alternative approaches that might be more effective in light of the language and purpose of section 13 of the BHC Act.

Question 47. Are there definitions in other rules or regulations that might inform the proposed definition of covered financial position? If so, what rule or regulation? How should that approach be incorporated into the proposed definition? Why would that approach be more appropriate?

Definitions in other rules or regulations are irrelevant to the issue at hand.

Question 48. Are there particular transactions or positions to which the application of the proposed definition of covered financial position is unclear? Is additional regulatory language, guidance, or clarity necessary?

There are no particular transactions or positions to which the application of the proposed definition of covered financial position is unclear. Additional regulatory language, guidance, or clarity is clearly unnecessary.

Question 49. The proposal would apply to long, short, synthetic, or other positions in one of the listed categories of financial instruments. Does this language adequately describe the type of positions that are intended to fall within the proposed

definition of covered financial position? If not, why not? Are there different or additional concepts that should be specified in this context? Please explain.

As the proposal would apply to long, short, synthetic, or other positions in one of the listed categories of financial instruments the language adequately describes the type of positions that are intended to fall within the proposed definition of covered financial position(s).

There are no reasonable different or additional concepts that should be specified in this context.

Question 50. Should the Agencies expand the scope of covered financial positions to include other transactions, such as spot commodities or foreign exchange or currency, or certain subsets of transaction (e.g., spot commodities or foreign exchange or currency traded on a highfrequency basis)? If so, which instruments and why?

The Agencies should not expand the scope of covered financial positions to include other transactions, such as spot commodities or foreign exchange or currency, or certain subsets of transaction (e.g., spot commodities or foreign exchange or currency traded on a highfrequency basis).

The number of Agencies and the number of their employees needs to be reduced.

Question 51. What factors should the Agencies consider in deciding whether to extend the scope of the proprietary trading restriction to other financial instruments under the authority granted in section 13(h)(4) of the BHC Act? Please explain.

The Agencies should not even consider in deciding whether to extend the scope of the proprietary trading restriction to other financial instruments under the authority granted in section 13(h)(4) of the BHC Act. They should stick to the basics at this time.

The eventuality may prove that the authority of the Agencies is greatly restricted and reduced, and so, fishing for more power at this time is not well advised.

Question 52. Is the proposed exclusion of any position that is a loan, a commodity, or foreign exchange or currency effective? If not, what alternative approaches might be more effective in light of the language and purpose of section 13 of the BHC Act? Should additional positions be excluded? If so, why and under what authority?

The proposed exclusion of any position that is a loan, a commodity, or foreign exchange or currency is effective.

Question 53. Are the proposed rule's definitions of commodity and contract of sale of a commodity for future delivery appropriate? If not, what alternative definitions would be more appropriate?

The proposed rule's definitions of commodity and contract of sale of a commodity for future delivery are appropriate.

Question 54. Is the proposed definition of derivative effective? If not, what alternative definition would be more effective? Should the proposed rule expressly incorporate the definition of "swap" and security-based swap" under the Federal commodities and securities laws? If not, what alternative approach should be taken? Are there transactions included in 128 See 76 FR 29818 (May 23, 2011). For example, the SEC and CFTC have proposed to not include (i) certain insurance products within the definitions of "swap" and "security-based swap" by regulation and (ii) certain consumer agreements (e.g., agreements to acquire or lease real property or purchase products at a capped price) and commercial agreements (e.g., employment contracts or the purchase of real property, intellectual property, equipment or inventory) by joint interpretation. See id. at 29832-34. The Agencies have proposed to define "derivative" in the proposed rule by reference to the definition of "swap" and "security-based swap" under the Federal securities and commodities laws in contemplation of the SEC and CFTC's proposed regulatory and interpretative exclusions; to the extent that such exclusions are not included in any final action taken by the SEC and CFTC, the Agencies will consider whether to state such exclusions expressly within the proposed rule's definition of derivative. Examples of excluded identified banking products are deposit accounts, savings accounts, certificates of deposit, or other deposit instruments issued by a bank.

130 See proposed rule § __.2(q). those incorporated definitions that should not be included in the proposed rule's definition? If so, what transactions and why? Are there transactions excluded from those incorporated definitions that should be included within the proposed rule's definition? If so, what transactions and why?

The proposed definition of derivative is effective.

The current definitions in the rule are accurate and fulfill their intended purpose. There is no need to change, add or remove any of them.

The proposal of the Agencies to define "derivative" in the proposed rule by reference to the definition of "swap" and "security-based swap" under the Federal securities and commodities laws in contemplation of the SEC and CFTC's proposed regulatory and interpretative exclusions is unnecessary and a complication that will

afford benefit only to paper shufflers at the Agencies while providing no protection to consumers and worsening the paper burden on banking entities and other financial professionals.

There are no further transactions that are excluded from those incorporated definitions that should be included within the proposed rule's definition.

Question 55. Is the proposed inclusion of foreign exchange forwards and swaps in the definition of derivative effective? If not, why not? On what basis would the Agencies conclude that such transactions are not derivatives? Are these transactions economically or functionally more similar to secured loans or repurchase arrangements than to commodity forwards and swaps? Would there be any unintended consequences to banking entities if such transactions are included in the proposal's definition of derivative? What effect is including foreign exchange swaps and forwards in the definition of derivative likely to have on banking entities, participants in the foreign exchange markets, and the liquidity and efficiency of foreign exchange markets generally? If included within the definition of derivative, should transactions in foreign exchange swaps and forwards be permitted under section 13(d)(1)(J) of the BHC Act? If so, why and on what basis? Please quantify your responses, to the extent feasible.

The proposed inclusion of foreign exchange forwards and swaps in the definition of derivative is effective. As to what basis would the Agencies would use to conclude that such transactions are not derivatives would be a matter for the internal activities at the Agencies.

It would be highly advantageous to all interested parties to reduce the number of Agencies involved as well as the number of employees the remaining ones retain.

These transactions are not economically or functionally more similar to secured loans or repurchase arrangements than to commodity forwards and swaps.

It is impossible to determine 'unintended consequences'. In any case the unintended consequences could not in any way be more destructive than the present state of affairs that the banking entities have caused to the economy of the United States of America and our citizenry.

There will be no noticeable or meaningful effect from including foreign exchange swaps and forwards in the definition of derivative.

The effect on banking entities, participants in the foreign exchange markets, and the liquidity and efficiency of foreign exchange markets generally should put the entire works into more orderly and legal operation by adoption and use of the Act.

Many of these changes and nuances being introduced by the Agencies can lead to confusion.

Question 56. Is the proposed inclusion of any purchase or sale of a nonfinancial commodity for deferred shipment or delivery that is intended to be physically settled in the definition of derivative effective? If not, why not? Would there be

any unintended consequences to banking entities if such transactions are included in the proposal's definition of derivative?

The proposed inclusion of any purchase or sale of a nonfinancial commodity for deferred shipment or delivery that is intended to be physically settled in the definition of derivative is effective.

Question 57. Is the proposed inclusion of foreign currency transactions described in section 2(c)(2)(C)(i) of the Commodity Exchange Act in the definition of derivative effective? If not, why not? Would there be any unintended consequences to banking entities if such transactions are included in the proposal's definition of derivative?

The proposed inclusion of foreign currency transactions described in section 2(c)(2)(C)(i) of the Commodity Exchange Act in the definition of derivative is effective.

Question 58. Is the proposed inclusion of commodity transactions described in section 2(c)(2)(D)(i) of the Commodity Exchange Act in the definition of derivative effective? If not, why not? Would there be any unintended consequences to banking entities if such transactions are included in the proposal's definition of derivative?

The proposed inclusion of commodity transactions described in section 2(c)(2)(D)(i) of the Commodity Exchange Act in the definition of derivative is effective.

Question 59. Is the proposed inclusion of any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b)) in the definition of derivative effective? If not, why not? Would there be any unintended consequences to banking entities if such transactions are included in the proposal's definition of derivative?

The proposed inclusion of any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b)) in the definition of derivative is effective.

Question 60. Is the manner in which the proposed definition of derivative excludes any transaction that the CFTC or SEC exclude by joint regulation, interpretation, guidance, or other action from the definition of "swap" or "security-based swap" effective? If not, what alternative approach would be more appropriate? Should such exclusions be restated in the proposed rule's definition? If so, why?

The manner in which the proposed definition of derivative excludes any transaction that the CFTC or SEC exclude by joint regulation, interpretation, guidance, or other action from the definition of “swap” or “security-based swap” is effective.

Question 61. Is the proposed rule’s definition of loan appropriate? If not, what alternative definition would be more appropriate? Should the definition of “loan” exclude a security? Should other types of traditional banking products be included in the definition of “loan”? If so, why?

The proposed rule’s definition of loan is appropriate and need not be modified, added to, removed or changed in any way by the Agencies.

Question 62. Are the proposed rule’s definitions of other terms in § __.3(d) appropriate? If not, what alternative definitions would be more appropriate?

The proposed rule’s definitions of other terms in § __.3(d) are appropriate.

Question 63. Is the definition of additional terms for purposes of subpart B of the proposed rule necessary? If so, what terms should be defined? How should those terms be defined?

The definition of additional terms for purposes of subpart B of the proposed rule is not necessary.

Question 64. Is the proposed rule’s implementation of the underwriting exemption effective? If not, what alternative approach would be more effective? For example, should the exemption include other transactions that do not involve a distribution of securities for which the banking entity is acting as underwriter?

The proposed rule’s implementation of the underwriting exemption is effective.

Question 65. Are the seven requirements included in the underwriting exemption effective? Is the application of each requirement to potential transactions sufficiently clear? Should any of the requirements be changed or eliminated? Should other requirements be added in order to better provide an exemption that is not susceptible to abuse through the taking of speculative, proprietary positions in the context of, or mischaracterized as, underwriting? Alternatively, are any of the proposed requirements inappropriately restrictive in that they would be inconsistent with the statutory exemption for certain underwriting activities? If so, how?

The seven requirements included in the underwriting exemption are effective. The application of each requirement to potential transactions is sufficiently clear. None

of the requirements should be changed or eliminated. No other requirements should be added.

None of the proposed requirements are inappropriately restrictive in that they would be inconsistent with the statutory exemption for certain underwriting activities.

Question 66. Do underwriters currently have processes in place that would prevent or reduce the likelihood of taking speculative, proprietary positions in the context of, or mischaracterized as, underwriting? If so, what are those processes?

Some underwriters currently have processes in place that would prevent or reduce the likelihood of taking speculative, proprietary positions in the context of, or mischaracterized as, underwriting. These are the honest and able underwriters. The processes vary from firm to firm. They are proprietary and are based on common sense reading of the law and fundamental understanding of finance – some things the Agencies seem to be struggling to come to terms with.

Question 67. Would any of the proposed requirements cause unintended consequences? Would the proposed requirements alter current underwriting practices in any way? Would any of the proposed requirements trigger an unwillingness to engage in underwriting? What impact, if any, would the proposed exemption have on capital raising? Please explain.

It does not seem that any of the proposed requirements would cause unintended consequences unless the Agencies are not intending on ensuring that common sense attention to detail and law consequently follow the application the Act.

Current underwriting practices that are carried out in a dishonest fashion against common sense and attention to the law will, of course, need to be changed or the practitioners of said practices will face fines and possible jail time.

The proposed requirements might trigger an unwillingness to engage in underwriting by the hooligans, ne'er-do-wells and criminals that have been feasting on the market but the effect on honest business people will be a buoying of confidence.

The impact on capital raising might be to shut out international criminal interests, pandering foreign governments and enemies of the United States from entering into, taking advantage of, manipulating and damaging our markets fuller.

For an explanation of these items the Agencies may assign an employee to read any of the major newspapers published over the course of the last 15 years – financial section and headlines.

Question 68. What increased costs, if any, would underwriters incur to satisfy the seven proposed requirements of the underwriting exemption? Would underwriters pass the increased costs onto issuers, selling security holders, or their customers in connection with qualifying for the proposed exemption?

There are no increased costs foreseen. There are, however, many opportunities being provided for profit and reward to honest, fair dealing business establishments.

Some underwriters may attempt to pass on alleged increased costs onto issuers, selling security holders, or their customers in connection with qualifying for the proposed exemption and the market will see to them.

Question 69. In addition to the specific activities highlighted above for purposes of evaluating whether a banking entity is acting as an underwriter as part of distribution of securities (e.g., assisting an issuer in capital raising, performing due diligence, etc), are there other or alternative activities that should be considered? Please explain.

There are no actual other or alternative activities that should be considered.

Question 70. Should the requirement that a covered financial position be a security be expanded to include other financial instruments? If so, why? How are such other instruments underwritten within the meaning of section 13(d)(1)(B) of the BHC Act?

The requirement that a covered financial position be a security should not be expanded to include other financial instruments.

Question 71. Is the proposed definition of a “distribution” of securities appropriate, or over- or under-inclusive in this context? Is there any category of underwriting activity that would not be captured by the proposed definition? If so, what are the mechanics of that underwriting activity? Should it be permitted under the proposed rule, and, if so, why? Would an alternative definition better identify offerings intended to be covered by the proposed definition? If so, what alternative definition, and why?

The proposed definition of a “distribution” of securities is appropriate and is neither over- or under-inclusive in this context.

There is no generally accepted category of underwriting activity that would not be captured by the proposed definition.

Question 72. Is the proposed definition of “underwriter” appropriate, or over- or underinclusive in this context? Would an alternative definition, such as the statutory definition of “underwriter” under the Securities Act, better identify persons intended to be covered by the proposed definition? If so, why?

The proposed definition of “underwriter” is appropriate. It is neither over- or underinclusive in this context.

Question 73. How accurately can a banking entity engaging in underwriting predict the near-term demands of clients, customers, and counterparties with respect to an offering? How can principal risk that is retained in connection with underwriting activities to support near-term client demand be distinguished from positions taken for speculative purposes?

A banking entity engaging in underwriting cannot predict to one hundred percent of certainty at any time the near-term demands of clients, customers, and counterparties with respect to an offering.

Principal risk that is retained in connection with underwriting activities to support near-term client demand be distinguished from positions taken for speculative purposes can be clearly tracked by ownership of the items and to whom the profits or losses are disbursed.

Question 74. Is the requirement that the underwriting activities of a banking entity relying on the underwriting exemption be designed to generate revenues primarily from fees, commissions, underwriting spreads or similar income effective? If not, how should the requirement be changed? Does the requirement appropriately capture the type and nature of revenues typically generated by underwriting activities? Is any further clarification or additional guidance necessary?

The requirement that the underwriting activities of a banking entity relying on the underwriting exemption be designed to generate revenues primarily from fees, commissions, underwriting spreads or similar income is effective.

Question 75. Is the requirement that the compensation arrangements of persons performing underwriting activities at a banking entity be designed not to reward proprietary risktaking effective? If not, how should the requirement be changed? Are there other types of compensation incentives that should be clearly referenced as consistent, or inconsistent, with permitted underwriting activity? Are there specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading?

The requirement that the compensation arrangements of persons performing underwriting activities at a banking entity be designed not to reward proprietary risktaking is effective.

There are many specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading and they are all clearly identified in the Act – they are the same characteristics that are prohibited for the banking entity. If someone is getting paid to do these things it follows that the banking entity is violating the act.

Question 76. Are there other types of underwriting activities that should also be included

within the scope of the underwriting exemption? If so, what additional activities and why? How would an exemption for such additional activities be consistent with the language and purpose of section 13 of the BHC Act? What criteria, requirements, or restrictions would be appropriate to include with respect to such additional activities to prevent misuse or evasion of the prohibition on proprietary trading?

There are no other types of underwriting activities that should also be included within the scope of the underwriting exemption.

Question 77. Does the proposed underwriting exemption appropriately accommodate private placements? If not, what changes are necessary to do so?

The proposed underwriting exemption appropriately accommodates private placements.

Question 78. The creation, offer and sale of certain structured securities such as trust

preferred securities or tender option bonds, among others, may involve the purchase of another security and repackaging of that security through an intermediate entity. Should the sale of the security by a banking entity to an intermediate entity as part of the creation of the structured security be permitted under one of the exemptions to the prohibition on proprietary trading currently included in the proposed rule (e.g., underwriting or market making)? Why or why not? For purposes of determining whether an exemption is available under these circumstances, should gain on sale resulting from the sale of the purchased security to the intermediate entity as part of the creation of the structured security be considered a relevant factor? Why or why not? What other factors should be considered in connection with the creation of the structured securities and why? Would the analysis be different if the banking entity acquired and retained the security to be sold to the intermediate entity as part of the creation of the structured securities as part of its underwriting of the underlying security? Why or why not?

The creation, offer and sale of certain structured securities such as trust preferred securities or tender option bonds, among others, may involve the purchase of another

security and repackaging of that security through an intermediate entity. The sale of the security by a banking entity to an intermediate entity as part of the creation of the structured

security should not be permitted under one of the exemptions to the prohibition on proprietary trading currently included in the proposed rule (e.g., underwriting or market making).

It is clearly in violation of the letter of the Act and the intent of the prohibition.

For purposes of determining whether an exemption is available under these circumstances, the gain on sale resulting from the sale of the purchased security to the intermediate entity as part of the creation of the structured security should not be considered a relevant factor.

It should not be allowed, therefore, this portion of the question is moot.

There are no other factors to be considered in connection with the creation of the structured securities.

They would obscure the reasoning and effectiveness of the Act.

The analysis would not be different if the banking entity acquired and retained the security to be sold to the intermediate entity as part of the creation of the structured securities

as part of its underwriting of the underlying security.

It is clearly a violation of the letter and intent of the Act.

Question 79. We seek comment on the application of the proposed exemption to a banking entity retaining a portion of an underwriting. Please discuss whether or not firms frequently retain securities in connection with a distribution in which the firm is acting as underwriter. Please identify the types of offerings in which this may be done (e.g., fixed income offerings, securitized products, etc.). Please identify and discuss any circumstances which can contribute to the decision regarding whether or not to retain a portion of an offering. Please describe the treatment of retained securities (e.g., the time period of retention, the type of account in which securities are retained, the potential disposition of the securities). Please discuss whether or not the retention is documented and, if so, how. Should the Agencies require disclosure of securities retained in connection with underwritings? Should the Agencies require specific documentation to demonstrate that the retained portion is connected to an underwriting pursuant to the proposed rule? If so, what kind of documentation should be required? Please discuss how you believe retention should be addressed under the proposal.

There is no need to discuss the application of the proposed exemption to a banking entity retaining a portion of an underwriting.

There should be no exemption of this kind.

Sometimes firms retain securities in connection with a distribution in which the firm is acting as underwriter and that is wrong.

Any offerings in which this may be done, especially fixed income offerings, securitized products, etc. where the banking entity maintains a 'secondary market' is clearly wrong and used to pad profits.

As to identifying and discussing any circumstances which can contribute to the decision regarding whether or not to retain a portion of an offering this question is so broad in scope as to invite any sort of nonsensical reply.

There are many ways to retain securities (e.g., the time period of retention, the type of account in which securities are retained, the potential disposition of the securities) – and they are all wrong if the company underwriting them is holding them for future sale or action.

The retention may be documented as a 'secondary market'.

If the Agencies do not currently require disclosure of securities retained in connection with underwritings I hazard to say they have not been doing their job.

There should be no retention of securities at any time by the underwriting company.

In some cases the banking entity may enter into agreement for bonds to be issued for a government – local, state, federal or foreign. The banking entities have apparently been working closely with the companies that rate the bonds. By issuing the bonds, underwriting the bonds and ensuring that the bonds are rated favorably and then issuing the bonds in greater amounts than is necessary for the work at hand (supposedly to be able to provide a 'suitable' interest rate) the banking entity then puts itself in a position of having an abundance of bonds.

They can then hold onto the 'extra' bonds for sale later – effectively controlling the price of those bonds in some cases and in other cases exposing the seller to higher and higher risk as time goes on. This places the issuer of the bond in a bad relationship with the banking entity – sort of like a drug user to a drug dealer.

More bonds must then be issued in order to carry out work that normally would not require them because more bonds are needed to pay off previous bonds. Even though local, state, federal and foreign governments are not supposed to enter into deals like this they obviously frequently do and have – with the results that are seen in Europe at this time, Japan and large parts of the local and state governments in the United States.

The worst offender has become the United States Federal Government and Agencies that are part of that government.

It is clear that the Act is necessary at this time and it should be enacted without further delay or interference from the 'Agencies'.

Question 80. Is the proposed rule's approach to implementing the exemption for permitted market making-related activities (i) appropriate and (ii) likely to be effective? If not, what alternative approach would be more appropriate or effective?

The proposed rule's approach to implementing the exemption for permitted market making-related activities is appropriate and will be effective if the Agencies ever get around to enforcing and doing their jobs.

An alternative approach would be to break up the Agencies and create one Agency which is competent and able to do the job without marrying off employees into families of people they are supposed to be regulating as in the case of Bernard Madoff.

Question 81. Does the proposed multi-faceted approach appropriately take into account and address the challenges associated with differentiating prohibited proprietary trading from permitted market making-related activities? Should the approach include other elements? If so, what elements and why? Should any of the proposed elements be revised or eliminated? If so, why and how?

The proposed multi-faceted approach clearly appropriately takes into account and addresses the challenges associated with differentiating prohibited proprietary trading from permitted market making-related activities. The approach should not include other elements. None of the proposed elements should be revised or eliminated. They are fine the way they are.

Question 82. Does the proposed multi-faceted approach provide banking entities and market participants with sufficient clarity regarding what constitutes permitted market making related activities? If not, how could greater clarity be provided?

The proposed multi-faceted approach provides banking entities and market participants with sufficient clarity regarding what constitutes permitted market making related Activities.

Question 83. What impact will the proposed multi-faceted approach have on the market making-related services that a banking entity provides to its customers? How will the proposed approach impact market participants who use the services of market makers? How will the approach impact the capital markets at large, and in particular the liquidity, efficiency and price transparency of capital markets? If any of these impacts are positive, how can they be amplified? If any of these impacts are negative, how can they be mitigated? Would the proposed rule's prohibition on proprietary trading and exemption for market making-related activity reduce incentives or opportunities for banking entities to trade against customers, as opposed to trading on behalf of customers? If so, please discuss the benefits arising from such reduced incentives or opportunities.

There will be little or no impact by the proposed multi-faceted approach have on the market making-related services that a banking entity provides to its customers if they are lawful and reasonable. The proposed approach will not impact market participants who use the services of market makers very much. The approach will improve the manner in which capital markets at large, and in particular the liquidity,

efficiency and price transparency of capital markets is reached, assigned, marketed and understood.

Many of these impacts are positive. As to how they can be amplified that is a nonsense question – it is not for the Agencies to interfere in the market and make it ‘more’ profitable. They are to stay out of it and see to their duties in regulating it not manipulating it.

As for any of these impacts being negative – they will be positive for the most part and will be negative in the eyes of those who are conducting underhanded business.

The proposed rule’s prohibition on proprietary trading and exemption for market making-related activity will reduce incentives or opportunities for banking entities to trade against customers, as opposed to trading on behalf of customers.

It is obvious what the benefits would be to disallowing banking entities to steal from their customers.

Question 84. What burden will the proposed multi-faceted approach have on banking entities, their customers, and other market participants? How can any burden be minimized or eliminated in a manner consistent with the language and purpose of the statute?

There will be no burden to bear by the adoption of the proposed multi-faceted approach on banking entities, their customers, and other market participants.

Question 85. Are there particular asset classes that raise special concerns in the context of market making-related activity that should be considered in connection with the proposed market-making exemption? If so, what asset class(es) and concern(s), and how should the concerns be addressed in the proposed exemption?

There are no particular asset classes that raise special concerns in the context of market making-related activity that should be considered in connection with the proposed market-making exemption.

Question 86. Are there other market making-related activities that the rule text should more clearly permit? Why or why not?

There are no other market making-related activities that the rule text should more clearly permit.

Question 87. Are the seven criteria included in the market-making exemption effective?

Is the application of each criterion to potential transactions sufficiently clear? Should any of the criteria be changed or eliminated? Should other criteria be added?

The seven criteria included in the market-making exemption are effective. The application of each criterion to potential transactions is sufficiently clear. None of the criteria should be changed or eliminated. No other criteria should be added?

Question 88. Is incorporation of concepts from the definition of “market maker” under the Exchange Act useful for purposes of section 13 of the BHC Act and consistent with its purposes? If not, what alternative definition would be more useful or more consistent?

Incorporation of concepts from the definition of “market maker” under the Exchange Act is useful for purposes of section 13 of the BHC Act and is consistent with its purposes.

Question 89. Is the proposed exemption overly broad or narrow? For example, would it encompass activity that should be considered prohibited proprietary trading under the proposed rule? Alternatively, would it prohibit forms of market making or market making-related activities that are permitted under other rules or regulations?

The proposed exemption is neither overly broad nor narrow.

Question 90. We seek commenter input on the types of banking entities and forms of activities that would not qualify for the proposed market-making exemption but that commenters consider to otherwise be market making. Please discuss the impact of not permitting such activities under the proposed exemption (e.g., the impact on liquidity).

Unless specifically set up to avoid the letter and intent of the law there are no types of banking entities and forms of activities that would not qualify for the proposed market-making exemption.

Question 91. Is the requirement that a trading desk or other organizational unit relying on the market-making exemption hold itself out as being willing to buy and sell, or otherwise enter into long and short positions in, the relevant covered financial position for its own account on a regular or continuous basis effective? If not, what alternative would be more effective? Does the proposed requirement appropriately differentiate between market making-related activities in different markets and asset classes? If not, how could such differences be better

reflected? Should the requirement be modified to include certain arbitrage trading activities engaged in by market makers that promote liquidity or price transparency, but do not serve customer, client or counterparty demands, within the scope of market making-related activity? If so why? How could such liquidity- or price transparency-promoting activities be meaningfully identified and distinguished from prohibited proprietary trading practices that also may incidentally promote liquidity or price transparency? Do particular markets or instruments, such as the market for exchange-traded funds, raise particular issues that are not adequately or appropriately addressed in the proposal? If so, how could the proposal better address those instruments, markets or market features?

The requirement that a trading desk or other organizational unit relying on the market-making exemption hold itself out as being willing to buy and sell, or otherwise enter into long and short positions in, the relevant covered financial position for its own account on a regular or continuous basis is effective.

The reason why is that it is effective.

Legal and proper liquidity- or price transparency-promoting activities can easily and meaningfully be identified and distinguished from prohibited proprietary trading practices that also may incidentally promote liquidity or price transparency because it is not a case of incidental cause – the illegal transactions are designed only to increase liquidity – that is profit for no clear financial reason other than to generate cash. It is odd that this needs to be spelled out to the Agencies but banking entities should not be increasing the money supply, as they are currently doing, at their own discretion without added value to the economy or their customers.

There are no particular markets or instruments, such as the market for exchange-traded funds, raise particular issues that are not adequately or appropriately addressed in the proposal.

Question 92. Do the proposed indicia of market making in liquid markets accurately reflect the factors that should generally be used to analyze whether a banking entity is engaged in market making-related activities for purposes of section 13 of the BHC Act and the proposed rule? If not, why not? Should any of the proposed factors be eliminated or modified? Should any additional factors be included? Is reliance on the SEC's indicia of bona fide market making for purposes of Regulation SHO under the Exchange Act and the equity securities market appropriate in the context of section 13 of the BHC Act and the proposed rule with respect to liquid markets? If not, why not?

The proposed indicia of market making in liquid markets accurately reflects the factors that should generally be used to analyze whether a banking entity is engaged in market making-related activities for purposes of section 13 of the BHC Act and the proposed rule.

None of the proposed factors should be eliminated or modified.

No additional factors should be included.

Reliance on the SEC's indicia of bona fide market making for purposes of Regulation SHO under the Exchange Act and the equity securities market is appropriate in the context of section 13 of the BHC Act and the proposed rule with respect to liquid markets.

Question 93. Do the proposed indicia of market making in illiquid markets accurately reflect the factors that should generally be used to analyze whether a banking entity is engaged in market making-related activities for purposes of section 13 of the BHC Act and the proposed rule? If not, why not? Should any of the proposed factors be eliminated or modified? Should any additional factors be included?

The proposed indicia of market making in illiquid markets accurately reflects the factors that should generally be used to analyze whether a banking entity is engaged in market making-related activities for purposes of section 13 of the BHC Act and the proposed rule.

None of the proposed factors should be eliminated or modified.

No additional factors should be included.

Question 94. How accurately can a banking entity predict the near-term demands of clients, customers, and counterparties? Are there measures that can distinguish the amount of principal risk that should be retained to support such near-term client, customer, or counterparty demand from positions taken for speculative purposes? How is client, customer, or counterparty demand anticipated in connection with market making-related activities, and how does such approach vary by asset class?

No banking entity can predict with one-hundred percent certitude the near-term demands of clients, customers, and counterparties.

Marketing strategies and business plans will provide the general information necessary for a concern to determine the amount of principal risk that should be retained to support such near-term client, customer, or counterparty demand from positions taken for speculative purposes. Anything in excess is counter-productive and destructive not only to the market and customers but to the concern itself as is now being illustrated in the market and was clearly spelled out when the United States Government needed to bail out firms engaging in practices intended to create what appeared to be limitless liquidity. As they did so they cheapened all real deals and would have destroyed themselves if the government had not intervened.

Client, customer, or counterparty demand is anticipated in connection with market making-related activities in proprietary fashions at each concern.

Each approach varies individually by asset class and market conditions.

Question 95. Is the requirement that a banking entity relying on the market-making exemption be registered as a dealer (or in the case of a financial institution that is a government securities dealer, has filed notice of that status as required by section 15C(a)(1)(B) of the Exchange Act), or exempt from registration or excluded from regulation as a dealer under relevant securities or commodities laws effective? If not, how should the requirement be changed? Does the requirement appropriately take into account the particular registration requirements applicable to dealing in different types of financial instruments? If not, how could it better do so? Does the requirement appropriately take into account the various registration exemptions and exclusions available to certain entities, such as banks, under the securities and commodities laws? If not, how could it better do so?

The requirement that a banking entity relying on the market-making exemption be registered as a dealer (or in the case of a financial institution that is a government securities dealer, has filed notice of that status as required by section 15C(a)(1)(B) of the Exchange Act), or exempt from registration or excluded from regulation as a dealer under relevant securities or commodities laws is effective.

The requirement appropriately takes into account the particular registration requirements applicable to dealing in different types of financial instruments.

The requirement appropriately takes into account the various registration exemptions and exclusions available to certain entities, such as banks, under the securities and commodities laws.

Question 96. Is the requirement that a trading desk or other organizational unit of a banking entity relying on the market-making exemption be designed to generate revenues primarily from fees, commissions, bid/ask spreads or similar income effective? If not, how should the requirement be changed? Does the requirement appropriately capture the type and nature of revenues typically generated by market making-related activities? Is any further clarification or additional guidance necessary? Can revenues primarily from fees, commissions, bid/ask spreads or similar income be meaningfully separated from other types of revenues?

The requirement that a trading desk or other organizational unit of a banking entity relying on the market-making exemption be designed to generate revenues primarily from fees, commissions, bid/ask spreads or similar income is effective.

The requirement appropriately captures the type and nature of revenues typically generated by market making-related activities.

There is no need for any further clarification or additional guidance necessary.

Revenues primarily from fees, commissions, bid/ask spreads or similar income can be meaningfully separated from other types of revenues if the business process or law calls for it. It is a matter of procedure – something which is apparently lacking at the Agencies.

Question 97. Is the requirement that the compensation arrangements of persons performing market making-related activities at a banking entity not be designed to encourage proprietary risk-taking effective? If not, how should the requirement be changed? Are there other types of compensation incentives that should be clearly referenced as consistent, or inconsistent, with permitted market making-related activity? Are their specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading?

The requirement that the compensation arrangements of persons performing market making-related activities at a banking entity not be designed to encourage proprietary risk-taking is effective

There are no other types of compensation incentives that should be clearly referenced as consistent, or inconsistent, with permitted market making-related activity.

Specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading are many and varied – hence the need for the Act. Many of them were demonstrated during the recent financial collapse – the involve tendering oversized bond offerings that cannot be fully taken up by customers or the public and leave a residue that can be auctioned off or sold over time by the banking entity that created it – ostensibly to provide funding for some government project – but ending up more revenue for the banking entity than it was ever designed to do for the client. Examples abound at Wells Fargo, Citibank and other institutions maintaining a ‘secondary market’ in such items which is generally shielded from the knowledge and ability of the general public to get at the instruments for regular investment purposes.

Question 98. Is the inclusion of market making-related hedging transactions within the market-making exemption effective and appropriate? Are the proposed requirements that certain hedging transactions must meet in order to be considered to have been made in connection with market making-related activity effective and sufficiently clear? If not, what alternative requirements would be more effective and/or clearer? Should any of the proposed requirements be eliminated? If so, which ones, and why?

The inclusion of market making-related hedging transactions within the market-making exemption is effective and appropriate.

The proposed requirements that certain hedging transactions must meet in order to be considered to have been made in connection with market making-related activity are effective and sufficiently clear.

None of the proposed requirements should be eliminated.

Question 99. Should the terms “client,” “customer,” or “counterparty” be defined for purposes of the market-making exemption? If so, how should these terms be defined? For example, would an appropriate definition of “customer” be: (i) a continuing relationship in which the banking entity provides one or more financial products or services prior to the time of the transaction; (ii) a direct and substantive relationship between the banking entity and a prospective customer prior to the transaction; (iii) a relationship initiated by the banking entity to a prospective customer to induce transactions; or (iv) a relationship initiated by the prospective customer with a view to engaging in transactions?

The terms “client,” “customer,” or “counterparty” should not be defined any further if at all for purposes of the market-making exemption.

For example, an appropriate definition of “customer” would not be: (i) a continuing relationship in which the banking entity provides one or more financial products or services prior to the time of the transaction; (ii) a direct and substantive relationship between the banking entity and a prospective customer prior to the transaction; (iii) a relationship initiated by the banking entity to a prospective customer to induce transactions; or (iv) a relationship initiated by the prospective customer with a view to engaging in transactions.

Leave the definitions and statements in the Act as is with no further changes regarding the above mentioned definitions. The Agencies are attempting to create imaginary business relationships that ultimately mask the actual business activity taking place with needless reference.

Question 100. Are there other types of market making-related activities that should also be included within the scope of the market-making exemption? If so, what additional activities and why? How would an exemption for such additional activities be consistent with the language and intent of section 13 of the BHC Act? What criteria, requirements, or restrictions would be appropriate to include with respect to such additional activities? How would such criteria, requirements, or restrictions prevent circumvention or evasion of the prohibition on proprietary trading?

There are no other types of market making-related activities that should also be included within the scope of the market-making exemption.

An exemption for such additional activities would not be consistent with the language and intent of section 13 of the BHC Act.

There is no reason to define further criteria, requirements, or restrictions and they would not be appropriate to include with respect to such additional activities.

Such criteria, requirements, or restrictions would not prevent circumvention or evasion of the prohibition on proprietary trading and would likely further exacerbate the problem.

Question 101. Do banking entities currently have processes in place that would prevent or reduce the likelihood of taking speculative, proprietary positions in the context of, or mischaracterized as, market making-related activities? If so, what processes?

Some banking entities currently have processes in place that would prevent or reduce the likelihood of taking speculative, proprietary positions in the context of, or mischaracterized as, market making-related activities.

The processes are proprietary processes that are legal and within the bounds of reason.

If it is not clear to the Agencies what constitutes illegal activity then that will need to be addressed by reducing the number of Agencies, the number of employees at those Agencies and educating the remainder in prudent financial concepts.

Question 102. Is the proposed rule's approach to implementing the hedging exemption effective? If not, what alternative approach would be more effective?

The proposed rule's approach to implementing the hedging exemption is effective.

Question 103. Does the proposed multi-faceted approach appropriately take into account and address the challenges associated with differentiating prohibited proprietary trading from permitted hedging activities? Should the approach include other elements? If so, what elements and why? Should any of the proposed elements be revised or eliminated? If so, why and how?

The proposed multi-faceted approach appropriately take into account and addresses the challenges associated with differentiating prohibited proprietary trading from permitted hedging activities.

The approach should not include other elements.

None of the proposed elements should be revised or eliminated.

Question 104. Does the proposed approach to implementing the hedging exemption provide banking entities and market participants with sufficient clarity regarding what constitutes permitted hedging activities? If not, how could greater clarity be provided?

The proposed approach to implementing the hedging exemption provides banking entities and market participants with sufficient clarity regarding what constitutes permitted hedging activities.

Question 105. What impact will the proposed approach to implementing the hedging

exemption have on the hedging and risk management activities of a banking entity and the services it provide to its clients? If any of these impacts are positive, how can they be amplified? If any of these impacts are negative, how can they be mitigated?

There will be little impact of the proposed approach on implementing the hedging exemption have on the hedging and risk management activities of a banking entity and the services it provide to its clients.

The impacts are neither positive or negative as regards profitability and the operation of the enterprise. There is no need for the Agencies to further their inquiries in this direction.

None of the impacts are believed to be or become negative.

Question 106. What burden will the proposed approach to implementing the hedging exemption have on banking entities? How can any burden be minimized or eliminated in a manner consistent with the language and purpose of the statute?

No estimable burden will be placed by the proposed approach on banking entities.

Question 107. Are the criteria included in the hedging exemption effective? Is the application of each criterion to potential transactions sufficiently clear? Should any of the criteria be changed or eliminated? Should other requirements be added?

The criteria included in the hedging exemption is effective.

The application of each criterion to potential transactions is sufficiently clear.

None of the criteria should be changed or eliminated.

No other requirements should be added.

Question 108. Is the requirement that a transaction hedge or otherwise mitigate one or more specific risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, basis risk, or similar risks, arising in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity effective? If not, what requirement would be more effective? Does the proposed approach sufficiently articulate the types of risks that a banking entity typically hedges? Does the proposal sufficiently address application of the hedging exemption to portfolio hedging strategies? If not, how should the proposal be changed?

The requirement that a transaction hedge or otherwise mitigate one or more specific risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, basis risk, or similar risks, arising in connection with

and related to individual or aggregated positions, contracts, or other holdings of a banking entity is effective.

The proposed approach sufficiently articulate the types of risks that a banking entity typically hedges.

The proposal sufficiently address application of the hedging exemption to portfolio hedging strategies.

Question 109. Does the manner in which section __.5 of the proposal would implement

the risk-mitigating hedging exemption effectively address transactions that hedge or otherwise mitigate specific risks arising in connection with and related to aggregated positions, contracts, or other holdings of a banking entity? Do certain hedging strategies or techniques that involve hedging the risks of aggregated positions (e.g., portfolio hedging) (i) create the potential for abuse of the hedging exemption or (ii) give rise to challenges in determining whether a banking entity is engaged in exempt, risk-mitigating hedging activity or prohibited proprietary trading? If so, what hedging strategies and techniques, and how? Should additional restrictions, conditions, or requirements be placed on the use of the hedging exemption with respect to aggregated positions so as to limit potential abuse of the exemption, assist banking entities and the Agencies in determining compliance with the exemption, or otherwise improve the effectiveness of the rule? If so, what additional restrictions, conditions, or requirements, and why?

The manner in which section __.5 of the proposal would implement the risk-mitigating hedging exemption effectively addresses transactions that hedge or otherwise mitigate specific risks arising in connection with and related to aggregated positions, contracts, or other holdings of a banking entity.

Certain hedging strategies or techniques that involve hedging the risks of aggregated positions (e.g., portfolio hedging) (i) create the potential for abuse of the hedging exemption or (ii) but do not give rise to challenges in determining whether a banking entity is engaged in exempt, risk-mitigating hedging activity or prohibited proprietary trading because the behaviors, processes and outcomes of illegal, unfair, improper and illogical actions are clearly distinguishable over even a short period of time or in single instances as opposed to reasonable banking and financial behaviors and actions.

No additional restrictions, conditions, or requirements should be placed on the use of the hedging exemption with respect to aggregated positions so as to limit potential abuse of the exemption, assist banking entities and the Agencies in determining compliance with the exemption, or otherwise improve the effectiveness of the rule.

Question 110. Is the requirement that the transaction be reasonably correlated to the risk

or risks the transaction is intended to hedge or otherwise mitigate effective? If not, how should the requirement be changed? Should some specific level of correlation and/or hedge effectiveness be required? Should the proposal specify

in greater detail how correlation should be measured? Should the proposal require hedges to be effective in periods of financial stress? Does the proposal sufficiently reflect differences in levels of correlation among asset classes? If not, how could it better do so?

The requirement that the transaction be reasonably correlated to the risk or risks the transaction is intended to hedge or otherwise mitigate is effective.

No specific level of correlation and/or hedge effectiveness should be required.

The proposal should not specify in greater detail how correlation should be measured.

The proposal should not require hedges to be effective in periods of financial stress.

The proposal sufficiently reflects differences in levels of correlation among asset classes.

Question 111. Is the requirement that the transaction not give rise, at the inception of the hedge, to significant exposures that are not themselves hedged in a contemporaneous transaction effective? Does the requirement establish an appropriate range for legitimate hedging while constraining impermissible proprietary trading? Is this requirement sufficiently clear? If not, what alternative would be more effective and/or clearer? Are there types of risk-mitigating hedging activities that may give rise to new and significant exposures that should be permitted under the hedging exemption? If so, what activities? Should the requirement that no significant exposure be introduced be extended for the duration of the hedging position? If so, why?

The requirement that the transaction not give rise, at the inception of the hedge, to significant exposures that are not themselves hedged in a contemporaneous transaction is effective.

The requirement establishes an appropriate range for legitimate hedging while constraining impermissible proprietary trading.

The requirement is sufficiently clear.

There are no commonly used, legal types of risk-mitigating hedging activities that may give rise to new and significant exposures that should be permitted under the hedging exemption.

The requirement that no significant exposure be introduced should not be extended for the duration of the hedging position.

Question 112. Is the requirement that any transaction conducted in reliance on the hedging exemption be subject to continuing review, monitoring and management after the transaction is established effective? If not, what alternative would be more effective?

The requirement that any transaction conducted in reliance on the hedging exemption be subject to continuing review, monitoring and management after the transaction is established is effective.

Question 113. Is the requirement that the compensation arrangements of persons performing risk-mitigating hedging activities at a banking entity be designed not to reward proprietary risk-taking effective? If not, how should the requirement be changed? Are there other types of compensation incentives that should be clearly referenced as consistent, or inconsistent, with permitted risk-mitigating hedging activity? Are there specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading?

The requirement that the compensation arrangements of persons performing risk-mitigating hedging activities at a banking entity be designed not to reward proprietary risk-taking is effective. There are no other commonly used and legal types of compensation incentives that should be clearly referenced as consistent, or inconsistent, with permitted risk-mitigating hedging activity.

There are no specific and identifiable characteristics of compensation arrangements that clearly incentivize prohibited proprietary trading because the wording has been cleverly hidden in proprietary agreements and internal practices which have wandered from the legal and rational methods commonly used in financing.

For example – the Agencies are not going to raid an office, open a drawer and find a document labeled ‘Incentives for Prohibited Proprietary Trading’ and a list of those persons profiting from that activity.

Question 114. Is the proposed documentation requirement effective? If not, what alternative would be more effective? Are there certain additional types of hedging transactions that should be subject to the documentation requirement? If so, what transactions and why? Should all types of hedging transactions be subject to the documentation requirement? If so, why? Should banking entities be required to document more aspects of a particular transactions (e.g., all of the criteria applicable to § __.5(b) of the proposed rule)? If so, what aspects and why? What burden would the proposed documentation requirement place on banking entities? How might such burden be reduced or eliminated in a manner consistent with the language and purpose of the statute?

The proposed documentation requirement is effective.

There are no other certain additional types of hedging transactions that should be subject to the documentation requirement.

No all types of hedging transactions be subject to the documentation requirement.

Banking entities should not be required to document more aspects of a particular transactions (e.g., all of the criteria applicable to § __.5(b) of the proposed rule).

There will be little or no burden from the proposed documentation requirement place on banking entities and customers and clients and the banking entities themselves will benefit from it.

There is no true burden to be reduced or eliminated in a manner consistent with the language and purpose of the statute and so no action is necessary and no other response to this question would be reasonable.

Question 115. Aside from the required documentation, do the substantive requirements of the proposed risk-mitigating hedging exemption suggest that additional documentation would be required to achieve compliance with the proposed rule? If so, what burden would this additional documentation requirement place on banking entities? How might such burden be reduced or eliminated in a manner consistent with the language and purpose of the statute?

Aside from the required documentation, do the substantive requirements of the proposed risk-mitigating hedging exemption do not suggest that additional documentation would be required to achieve compliance with the proposed rule

There is no such burden to be reduced or eliminated in a manner consistent with the language and purpose of the statute.

Question 116. Is the proposed rule's approach of identifying which of the statutory exemptions contained in section 13(d)(1) of the BHC Act apply to the proposed rule's proprietary trading provisions effective and/or consistent the language and purpose of the statute? If not, what alternative would be more effective and/or consistent with the language and purpose of the statute?

The proposed rule's approach of identifying which of the statutory exemptions contained in section 13(d)(1) of the BHC Act apply to the proposed rule's proprietary trading provisions is obviously effective and/or consistent with the language and purpose of the statute.

Question 117. Are there statutory exemptions that should apply to the proposed rule's proprietary trading provisions that were not included? If so, what exemptions and why?

There are no realistic statutory exemptions that should apply to the proposed rule's proprietary trading provisions that were not included.

Question 118. Are there statutory exemptions that were included in the proposed rule's proprietary trading provisions that should not have been included? If so, what exemptions and why?

There are no statutory exemptions that were included in the proposed rule's proprietary trading provisions that should not have been included.

Question 119. Is the proposed rule's application to trading in government obligations sufficiently clear? Should such obligations expressly include, for example, instruments issued by third parties but insured or guaranteed by an enumerated government entity or otherwise backed by its full faith and credit?

The proposed rule's application to trading in government obligations is sufficiently clear? Such obligations should not expressly include, for example, instruments issued by third parties but insured or guaranteed by an enumerated government entity or otherwise backed by its full faith and credit.

Question 120. Should the Agencies adopt an additional exemption for proprietary trading in State or municipal agency obligations under section 13(d)(1)(J) of the BHC Act? If so, how would such an exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States?

The Agencies should not adopt an additional exemption for proprietary trading in State or municipal agency obligations under section 13(d)(1)(J) of the BHC Act.

Question 121. Should the Agencies adopt an additional exemption for proprietary trading in options or other derivatives referencing an enumerated government obligation under section 13(d)(1)(J) of the BHC Act? For example, should the Agencies provide an exemption for options or other derivatives with respect to U.S. government debt obligations? If so, how would such an exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States?

The Agencies should not adopt an additional exemption for proprietary trading in options or other derivatives referencing an enumerated government obligation under section 13(d)(1)(J) of the BHC Act.

Question 122. Should the Agencies adopt an additional exemption for proprietary trading in the obligations of foreign governments and/or international and multinational development types of government obligations, notwithstanding the prohibition on proprietary trading. See 12 U.S.C. 1851(d)(1)(A). 164 The Agencies propose that

United States “agencies” for this purpose will include those agencies described in section 201.108(b) of the Board’s Regulation A. See 12 CFR 201.108(b). The Agencies also note that the terms of the exemption would encompass the purchase or sale of enumerated government obligations on a forward basis (e.g., in a to-be-announced market). Consistent with the statutory language, the proposed rule does not extend the government obligations exemption to transactions in obligations of an agency of any State or political subdivision thereof. banks under section 13(d)(1)(J) of the BHC Act? If so, what types of obligations should be exempt? How would such an exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States?

There seems to have been something wrong in the wording of the above question – so I restrict myself to answering the first part thereof.

The Agencies should not adopt an additional exemption for proprietary trading in the obligations of foreign governments and/or international and multinational development types of government obligations, notwithstanding the prohibition on proprietary trading.

Question 123. Should the Agencies adopt an additional exemption for proprietary trading in any other type of government obligations under section 13(d)(1)(J) of the BHC Act? If so, how would such an exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States?

The Agencies should adopt an additional exemption for proprietary trading in any other type of government obligations under section 13(d)(1)(J) of the BHC Act.

Question 124. Are the definitions of “government security” and “municipal security” in sections 3(a)(42) and 3(a)(29) of the Exchange Act helpful in determining the proper scope of this exemption? If so, please explain their utility and how incorporating such definitions into the exemption would be consistent with the language and purpose of section 13 of the BHC Act.

There should be no further exemptions provided or promoted by the Agencies.

Question 125. Is the proposed rule’s articulation of three categories of transactions on behalf of customers effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Should any of the categories be eliminated? Should any additional categories be added? Please explain.

The proposed rule’s articulation of three categories of transactions on behalf of customers is effective and sufficiently clear.

None of the categories should be eliminated.

No additional categories should be added.

Question 126. Is the proposed rule's exemption of certain investment adviser, commodity trading advisor, trustee or similar fiduciary transactions effective?

What other types

of relationships are or should be captured by the proposed rule's reference to "similar fiduciary relationships," and why? Is application of this part of the exemption to particular transactions sufficiently clear? Should any other specific types of fiduciary or other relationships be specified in the rule? If so, what types and why? What impact will the proposed rule's implementation of the exemption have on the investment adviser, commodity trading advisor, trustee or similar fiduciary activities of banking entities? If such impacts are negative, how could they be mitigated or eliminated in a manner consistent with the purpose and language of the statute?

The proposed rule's exemption of certain investment adviser, commodity trading advisor, trustee or similar fiduciary transactions is effective.

There are no other types of relationships are or should be captured by the proposed rule's reference to "similar fiduciary relationships."

The matter is sufficiently clear and effective as is.

Application of this part of the exemption to particular transactions is sufficiently clear.

No other specific types of fiduciary or other relationships should be specified in the rule.

There will be very little impact by the proposed rule's implementation of the exemption have on the investment adviser, commodity trading advisor, trustee or similar fiduciary activities of banking entities except to ensure that they are legal and operate soundly.

Question 127. Is the proposed rule's exemption of riskless principal transactions effective? If not, what alternative would be more appropriate? Is the description of qualifying riskless principal activity sufficiently clear? If not, how should it be clarified? Should the riskless principal transaction exemption include a requirement that the banking entity must purchase (or sell) the covered financial position as principal at the same price to satisfy the customer buy (or sell) order, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee? Why or why not? Should the riskless principal exemption include a requirement with respect to the timeframe in which the principal transaction must be allocated to a riskless principal or customer account? Why or why not?

The proposed rule's exemption of riskless principal transactions is effective.

The riskless principal transaction exemption should not include a requirement that the banking entity must purchase (or sell) the covered financial position as principal at the same price to satisfy the customer buy (or sell) order, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee.

It is an unnecessary encumbrance and only serves to allow the Agencies to gloss over obvious inconsistencies.

The riskless principal exemption should not include a requirement with respect to the timeframe in which the principal transaction must be allocated to a riskless principal or customer account.

It is a needless encumbrance.

Question 128. Is the proposed rule's exemption of trading for separate accounts by insurance companies effective? If not, what alternative would be more appropriate? Does the proposed exemption sufficiently address the variety of customer-driven separate account structures typically used? If not, how should it address such structures? Does the proposed exemption sufficiently address the variety of regulatory or supervisory regimes to which insurance companies may be subject?

The proposed rule's exemption of trading for separate accounts by insurance companies is effective.

The proposed exemption sufficiently addresses the variety of customer-driven separate account structures typically used.

The proposed exemption sufficiently addresses the variety of regulatory or supervisory regimes to which insurance companies may be subject.

Question 129. What impact will the proposed rule's implementation of the exemption have on the insurance activities of insurance companies affiliated with banking entities? If such impacts are negative, how could they be mitigated or eliminated in a manner consistent with the purpose and language of the statute?

There will be little impact by the proposed rule's implementation of the exemption on the insurance activities of insurance companies affiliated with banking entities except to keep them from illegal and inefficient practices.

Question 130. Should the term "customer" be defined for purposes of the exemption for transactions on behalf of customers? If so, how should it be defined? For example, would an appropriate definition be (i) a continuing relationship in which the banking entity provides one or more financial products or services prior to the time of the transaction, (ii) a direct and substantive relationship between the banking entity and a prospective customer prior to the transaction, or (iii) a relationship initiated by the banking entity to a prospective customer for purposes of the transaction?

The term "customer" should not be defined for purposes of the exemption for transactions on behalf of customers.

The following suggestion by the Agencies would not be an appropriate definition be (i) a continuing relationship in which the banking entity provides one or more financial products or services prior to the time of the transaction, (ii) a direct and substantive relationship between the banking entity and a prospective customer prior to the transaction, or (iii) a relationship initiated by the banking entity to a prospective customer for purposes of the transaction.

The purposeful wording by the Agencies would allow the simple creations of new words and descriptions to avoid the letter and intent of the law and allow for continued malfeasance to be the order the day.

Question 131. Is the exemption for trading on behalf of customers in the proposed rule over- or under-inclusive? If it is under-inclusive, please discuss any additional activities that should qualify as trading on behalf of customers under the rule. What are the mechanics of the particular trading activity and how does it qualify as being on behalf of customers? Are there certain requirements or restrictions that should be placed on the activity, if permitted by the rule, to prevent evasion of the prohibition on proprietary trading? How would permitting the activity be consistent with the purpose and language of section 13 of the BHC Act? If the proposed exemption is over-inclusive, please explain what aspect of the proposed exemption does not involve trading on behalf of customers within the language and purpose of the statute.

The exemption for trading on behalf of customers in the proposed rule is neither over- or under-inclusive – it is just right.

There are many different ways that this is carried on at different banking entities – the mechanics of the particular trading activity are that the banking entity trades on behalf of, or says they are, the customer. What happens then is the subject and import of the Act.

It qualifies as being on behalf of customers if that is the stated reason or if the Banking Entity is using funds belonging to or derived from the customer funds to do the trading.

Question 132. Should any of the statutory requirements for the exemption be further clarified in the proposed rule? If so, how? Should any additional requirements be added? If so, what requirements and why?

None of the statutory requirements for the exemption be further clarified in the proposed rule.

No additional requirements should be added.

Question 133. Does the proposed rule appropriately and clearly define a general account for these purposes? If not, what alternative definition would be more appropriate?

The proposed rule appropriately and clearly defines a general account for these purposes.

Question 134. For purposes of the exemption, are the insurance company investment laws, regulations, and written guidance of any particular State or jurisdiction insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States? If so, why?

For purposes of the exemption, are the insurance company investment laws, regulations, and written guidance of any particular State or jurisdiction are not considered insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States because Federal Law supersedes State Law in this arena.

Question 135. What impact will the proposed rule's implementation of the exemption have on the insurance activities of insurance companies affiliated with banking entities? If such impacts are negative, how could they be mitigated or eliminated in a manner consistent with the purpose and language of the statute?

There will be little impact by the proposed rule's implementation of the exemption on the insurance activities of insurance companies affiliated with banking entities except to insure that their illegal and questionable activities will have to cease.

Question 136. Is the proposed rule's implementation of the foreign trading exemption effectively delineated? If not, what alternative would be more effective and/or clearer?

The proposed rule's implementation of the foreign trading exemption is effectively delineated.

Question 137. Are the proposed rule's provisions regarding when an activity will be considered to have been conducted pursuant to section 4(c)(9) of the BHC Act effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Do those provisions effectively address the application of the foreign trading exemption to foreign banking entities not subject to the BHC Act generally? If not, how should the proposed rule apply the exemption?

The proposed rule's provisions regarding when an activity will be considered to have been conducted pursuant to section 4(c)(9) of the BHC Act are effective and sufficiently clear.

The provisions effectively address the application of the foreign trading exemption to foreign banking entities not subject to the BHC Act generally.

Question 138. Are the proposed rule’s provisions regarding when an activity will be considered to have occurred solely outside the United States effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Should any requirements be modified or removed? If so, which requirements and why? Should additional requirements be added? If so, what requirements and why?

The proposed rule’s provisions regarding when an activity will be considered to have occurred solely outside the United States is effective and sufficiently clear. No other requirements should be modified or removed. No additional requirements should be added.

Question 139. Is the proposed rule’s definition of “resident of the United States” effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Is the definition over- or under-inclusive? If so, why? Should the definition more closely track, or incorporate by reference, the definition of “U.S. person” under the SEC’s Regulation S under the Securities Act? If so, why?

The proposed rule’s definition of “resident of the United States” is effective and sufficiently clear.

The definition is neither over- or under-inclusive.

The definition should not need to closely track or incorporate by reference, the definition of “U.S. person” under the SEC’s Regulation S under the Securities Act.

Question 140. Does the proposed rule effectively define a resident of the United States for these purposes? If not, how should the definition be altered?

The proposed rule effectively defines a resident of the United States for these purposes.

Question 141. Should the Agencies use the authority provided in section 13(d)(1)(J) of the BHC Act to allow U.S.-controlled banking entities to engage in proprietary trading pursuant to section 4(c)(13) of the BHC Act outside of the United States under certain circumstances? If so, under what circumstances should this be permitted and how would such activity promote and protect the safety and soundness of banking entities and the financial stability of the United States?

The Agencies should not at any time nor under any circumstances be allowed to use the authority provided in section 13(d)(1)(J) of the BHC Act to allow U.S.-controlled banking entities to engage in proprietary trading pursuant to section 4(c)(13) of the BHC Act outside of the United States under certain circumstances.

Question 142. Should the Agencies adopt any exemption from the prohibition on proprietary trading under section 13(d)(1)(J) of the BHC Act? If so, what exemption and why? How would such an exemption promote and protect the safety and soundness of banking entities and the financial stability of the United States?

The Agencies should not be allowed to adopt any exemption from the prohibition on proprietary trading under section 13(d)(1)(J) of the BHC Act.

Question 143. Is the use of the proposed reporting requirements as part of the multifaceted approach to implementing the prohibition on proprietary trading appropriate? Why or why not?

The use of the proposed reporting requirements as part of the multifaceted approach to implementing the prohibition on proprietary trading is entirely appropriate.

The reason why is that the Agencies clearly have not been performing their functions or their duties correctly and the reporting requirements will allow general oversight of the systems and activities of banking entities that can be fairly and evenly regulated. Without this type of reporting the financial stability of the United States would once again be left in the inadequate hands of the Agencies and that is clearly not to the advantage to our nation and citizens.

Question 144. Is the proposed gradual approach to implementing reporting requirements effective? If not, what approach would be more effective? For example, should the Agencies defer reporting of quantitative measurements until banking entities have developed and refined their compliance programs through the supervision and examination process? What would be the costs and benefits of such an approach?

The proposed gradual approach to implementing reporting requirements is effective.

The Agencies should not defer reporting of quantitative measurements until banking entities have developed and refined their compliance programs through the supervision and examination process.

The costs to such an approach would be high in regards the amount the government would have to pay out to support the Agencies while they worked out a way to monitor items which have not been put in place. There are no benefits to this approach. It is a boondoggle.

Question 145. What role, if any, could or should the Office of Financial Research (“OFR”) play in receiving and analyzing banking entities’ reported quantitative measurements? Should reporting to the OFR be required instead of reporting to the relevant Agency, and would such reporting be consistent with the composition and purpose of OFR? In the alternative, should reporting to either (i)

only the relevant Agency (or Agencies) or (ii) both the relevant Agency (or Agencies) and OFR be required? If so, why? What are the potential costs and benefits of reporting quantitative measurements to the OFR? Please explain.

The Office of Financial Research (“OFR”) should not play any role in receiving and analyzing banking entities’ reported quantitative measurements.

Reporting to the OFR should not be required instead of reporting to the relevant Agency.

Such reporting would be inconsistent with the composition and purpose of OFR. Only reporting to the relevant Agency(ies) should be required.

Question 146. Is there an alternative manner in which the Agencies should develop and propose the reporting requirements for quantitative measurements? If so, how should they do so?

There are no reasonable and prudent alternative manners or methods in which the Agencies should develop and propose the reporting requirements for quantitative measurements.

Question 147. Does the proposed approach provide sufficient time for the development and implementation of effective reporting requirements? If not, what alternative approach would be preferable?

The proposed approach provide more than sufficient time for the development and implementation of effective reporting requirements.

Question 148. Should a trading unit be permitted not to furnish a quantitative measurement otherwise required under Appendix A if it can demonstrate that the measurement is not, as applied to that unit, calculable or useful in achieving the purposes of the Appendix with respect to the trading unit’s covered trading activities? How might a banking entity make such a demonstration?

A trading unit should not be permitted not to furnish a quantitative measurement otherwise required under Appendix A if it can demonstrate that the measurement is not, as applied to that unit, calculable or useful in achieving the purposes of the Appendix with respect to the trading unit’s covered trading activities.

Question 149. Is the manner in which the Agencies propose to utilize the conformance period for review of collected data and refinement of the reporting requirements effective? If not, what process would be more effective?

The manner in which the Agencies propose to utilize the conformance period for review of collected data and refinement of the reporting requirements is effective.

Question 150. Is the proposed \$1 billion trading asset and liability threshold, which is also currently used in the Market Risk Capital Rules for purposes of identifying which banks and bank holdings companies must comply with those rules, an appropriate standard for triggering the reporting and recordkeeping requirements of the proposed rule? Why or why not? If not, what alternative standard would be a better benchmark for triggering the reporting and recordkeeping requirements?

The proposed \$1 billion trading asset and liability threshold, which is also currently used in the Market Risk Capital Rules for purposes of identifying which banks and bank holdings companies must comply with those rules, is an appropriate standard for triggering the reporting and recordkeeping requirements of the proposed rule.

At this time it appears to be a fair, safe, prudent and reasonable measure to put in place at this time – that is why.

Question 151. What are the typical trading activities (e.g., market making-related activities) of a banking entity with less than \$1 billion in gross trading assets and liabilities? How complex are those trading activities?

The typical trading activities (e.g., market making-related activities) of a banking entity with less than \$1 billion in gross trading assets and liabilities are varied according to the business in which they are in.

The answer to this question will have as varied answers as will to the question ‘What are the typical business activities of any business type in any industry?’.

The complexity of the trading activities will vary according to the businesses in which they entity is engaged in. This question – 151 – clearly shows a serious disconnect between the Agencies and the work they are supposed to have been doing.

Question 152. Should the proposed \$1 billion trading and asset liability threshold used for triggering the reporting and recordkeeping requirements adjust each time the thresholds for complying with the Market Risk Capital Rules adjust, or otherwise be adjusted over time? If not, how and when should the numerical threshold be adjusted?

The proposed \$1 billion trading and asset liability threshold used for triggering the reporting and recordkeeping requirements should be left as it is as written within the Act.

Question 153. Should all banking entities be required to comply with the reporting and recordkeeping requirements set forth in Appendix A in order to better protect against prohibited proprietary trading, rather than only those banking entities that

meet the proposed \$1 billion trading asset and liability threshold? Why or why not?

Only those banking entities that meet the proposed \$1 billion trading asset and liability should be required to comply with the reporting and recordkeeping requirements set forth in Appendix A in order to better protect against prohibited proprietary trading.

The reason for this is that it is a reasonable and prudent measure and will reduce unnecessary and the usual ineffective interference by the Agencies in the business activities of corporations working to ensure the financial stability and profitability of the United States.

Question 154. Should banking entities that fall under the proposed \$1 billion trading asset and liability threshold be required to comply with the reporting and recordkeeping provisions for a pilot period in order to help inform judgment regarding the levels of quantitative measurements at such entities and the appropriate frequency and scope of examination by the relevant Agency for such banking entities? Why or why not?

Banking entities that fall under the proposed \$1 billion trading asset and liability threshold should not be required to comply with the reporting and recordkeeping provisions for a pilot period in order to help inform judgment regarding the levels of quantitative measurements at such entities and the appropriate frequency and scope of examination by the relevant Agency for such banking entities.

The problems that have arisen in the present financial crisis, which was, by the way, aided and abetted by the inefficient activities of the Agencies, were concentrated with companies that exceeded the threshold.

Question 155. Are the ways in which the proposed rule would make use of reported quantitative measurements effective? If not, what uses would be more effective? Should the proposed rule instead use quantitative measurements as a dispositive tool for identifying prohibited proprietary trading? If so, what types of quantitative measurements should be employed, what numerical amount would indicate impermissible proprietary trading activity, and why? Should the quantitative measurements play a less prominent role than proposed in identifying prohibited proprietary trading and why?

The ways in which the proposed rule would make use of reported quantitative measurements are effective.

The proposed rule should not use quantitative measurements as a dispositive tool for identifying prohibited proprietary trading.

**Question 156. Are the proposed definitions of terms provided in Appendix A effective?
If not, how should the definitions be amended?**

The proposed definitions of terms provided in Appendix A are effective.

Question 157. Is the proposed definition of “trading unit” effective? Is it sufficiently clear? If not, what alternative definition would be more effective and/or clearer? Should the definition include more or less granular levels of activity? If so, what specific criteria should be used to determine the appropriate level of granularity?

The proposed definition of “trading unit” is effective.

It is sufficiently clear.

The definition should not include more or less granular levels of activity.

Question 158. If you are a banking entity, how would your trading activity be categorized, in terms of quantity and type, under the proposed definition of trading unit in Appendix A? For each trading unit type, what categories of quantitative measurements (e.g., risk-management measurements) or specific quantitative measurements (e.g., Stressed Value-at-Risk (“Stress VaR”)) are best suited to assist in distinguishing prohibited proprietary trading from permitted trading activity?

I decline to provide any proprietary information to the Agencies at this time.

Quantitative measurements outside of any included as referenced in the Act should not be used.

Question 159. Is the proposed rule’s requirement that quantitative measurements be reported at multiple levels of organization, including for quantitative measurements historically reported on an aggregate basis (e.g., Value-at-Risk (“VaR”) or Stress VaR) appropriate? If not, what alternative would be more effective? What burdens are associated with such a requirement? How might those burdens be reduced or limited? Please quantify your answers, to the extent feasible.

The proposed rule’s requirement that quantitative measurements be reported at multiple levels of organization, including for quantitative measurements historically reported on an aggregate basis (e.g., Value-at-Risk (“VaR”) or Stress VaR) is appropriate.

Question 160. Is the proposed tiered approach to identifying which banking entities and trading units must comply with the reporting requirements effective? If not, what alternative would be more effective? Does the proposal strike the appropriate

balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements? If not, how could that balance be improved? Should the relevant gross trading assets and liabilities threshold for any category be increased or reduced? If so, why?

The proposed tiered approach to identifying which banking entities and trading units must comply with the reporting requirements is entirely effective.

The proposal strikes the appropriate balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements.

The relevant gross trading assets and liabilities threshold for any category should neither be increased or reduced.

Question 161. Should the \$1 billion and \$5 billion gross trading assets and liabilities thresholds used to identify the extent to which a banking entity is required to furnish quantitative measurements be increased or reduced? If so, why? Should the thresholds be indexed in some way to account for fluctuations in capital markets activity over time? If so, what would be an appropriate method of indexation?

The \$1 billion and \$5 billion gross trading assets and liabilities thresholds used to identify the extent to which a banking entity is required to furnish quantitative measurements should neither be increased nor reduced.

The thresholds should not be indexed in some way to account for fluctuations in capital markets activity over time.

Question 162. Is the proposed \$5 billion trading asset and liability threshold an appropriate standard for triggering enhanced reporting requirements under the proposed rule? Why or why not? If not, what alternative standard would be a better benchmark for triggering enhanced reporting requirements?

The proposed \$5 billion trading asset and liability threshold is an appropriate standard for triggering enhanced reporting requirements under the proposed rule.

Question 163. Should the proposed \$5 billion trading and asset liability threshold used for triggering enhanced reporting requirements under the proposed rule be subject to adjustment over time? If so, how and when should the numerical threshold be adjusted?

The proposed \$5 billion trading and asset liability threshold used for triggering enhanced reporting requirements under the proposed rule should not initially be subject to adjustment

over time and if at any time it is to be subject to adjustment the Agencies should not have any decision making or participation in those decision making processes associated with the adjustment(s).

Question 164. Is there a different criterion other than gross trading assets and liabilities that would be more appropriate for identifying banking entities that must furnish quantitative measurements? If so, what is the alternative criterion, and why would it be more appropriate? Are worldwide gross trading assets and liabilities the appropriate criterion for foreign-base banking entities? If not, what alternative criterion would be more appropriate, and why?

There is no other or different criterion than gross trading assets and liabilities that would be more appropriate for identifying banking entities that must furnish quantitative measurements.

Worldwide gross trading assets and liabilities are the appropriate criterion for foreign-based banking entities.

Question 165. Are the quantitative measurements specified for the various types of banking entities and trading units effective? If not, what alternative set of measurements would be more effective? For each type of trading unit, does the proposal strike the appropriate balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements? If not, how could that balance be improved?

The quantitative measurements specified for the various types of banking entities and trading units are effective.

For each type of trading unit the proposal strike the appropriate balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements.

Question 166. Should banking entities with gross trading assets and liabilities between \$1 billion and \$5 billion also be required to calculate and report some of the quantitative measurements proposed for banking entities meeting the \$5 billion threshold for purposes of assessing whether the banking entity's underwriting, market making, risk-mitigating hedging, and trading in certain government obligations activities involve a material exposure to high-risk assets or high-risk trading strategies? If so, which quantitative measurements and why? If not, why not?

Banking entities with gross trading assets and liabilities between \$1 billion and \$5 billion should not also be required to calculate and report some of the quantitative measurements proposed for banking entities meeting the \$5 billion threshold for purposes of assessing whether the banking entity's underwriting, market making, risk-mitigating hedging, and trading in certain government obligations activities involve a material exposure to high-risk assets or high-risk trading strategies.

Question 167. Is the proposed frequency of reporting effective? If not, what frequency would be more effective? Should the quantitative measurements be required to be reported quarterly, annually, or upon the request of the applicable Agency and why?

The proposed frequency of reporting is effective.

Question 168. Are the proposed quantitative measurements appropriate in general? If not, what alternative(s) would be more appropriate, and why? Should certain quantitative measurements be eliminated, and if so, why? Should additional quantitative measurements be added? If so, which measurements and why? How would those additional measurements be described and calculated?

The proposed quantitative measurements are appropriate in general.
Certain quantitative measurements should not be eliminated.
Additional quantitative measurements should not be added.

Question 169. How many of the proposed quantitative measurements do banking entities currently utilize? What are the current benefits and costs associated with calculating such quantitative measurements? Would the reporting and recordkeeping requirements proposed in Appendix A for such quantitative measurements impose any significant, additional benefits or costs?

There are not many of the proposed quantitative measurements currently utilized.

Those that do perform some work similar to these measurements do them to ensure profitability.

The reporting and recordkeeping requirements proposed in Appendix A for such quantitative measurements would not impose any significant, additional benefits or costs to banking entities except to ensure that they act in a prudent and lawful manner during the execution of business transactions which is one of the intentions of the Act if not the intention of the Agencies.

Question 170. Which of the proposed quantitative measurements do banking entities

currently not utilize? What are the potential benefits and costs to calculating these quantitative measurements and complying with the proposed reporting and recordkeeping requirements? Please quantify your answers, to the extent feasible.

It is impossible for any one person to determine which of the proposed quantitative measurements banking entities do not currently utilize. Such a question is Kafkaesque.

(NOTE : Kafkaesque

1. Marked by a senseless, disorienting, often menacing complexity.

USE EXAMPLE : Kafkaesque bureaucracies – AKA ‘The Agencies’)

The potential benefits and costs to calculating these quantitative measurements and complying with the proposed reporting and recordkeeping requirements will vary from instance to instance.

Question 171. Is the scope and frequency of required reporting appropriate? If not, what alternatives would be more appropriate? What burdens would be associated with reporting quantitative measurements on that basis, and how could those burdens be reduced or eliminated in a manner consistent with the purpose and language of the statute? Please quantify your answers, to the extent feasible.

The scope and frequency of required reporting is appropriate.

Question 172. For each of the categories of quantitative measurements (e.g., quantitative measurements relating to risk management), what factors should be considered in order to further refine the proposed category of quantitative measurements to better distinguish prohibited proprietary trading from permitted trading activity? For example, should the timing of a calculation be considered significant in certain contexts (e.g., should specific quantitative measurements be calculated during the middle of a trading day instead of the end of the day)? Please quantify your answers, to the extent feasible.

For each of the categories of quantitative measurements (e.g., quantitative measurements relating to risk management), no other factors other than already contained within the Act should be considered in order to further refine the proposed category of quantitative measurements to better distinguish prohibited proprietary trading from permitted trading activity.

The timing of a calculation should not be considered significant in certain contexts (e.g., should specific quantitative measurements be calculated during the middle of a trading day instead of the end of the day).

Question 173. In light of the size, scope, complexity, and risk of covered trading

activities, do commenters anticipate the need to hire new staff with particular expertise in order to calculate the required quantitative measurements (e.g., collect data and make computations)? Do commenters anticipate the need to develop additional infrastructure to obtain and retain data necessary to compute the proposed quantitative measurements? Please explain and quantify your answers, to the extent feasible.

In light of the size, scope, complexity, and risk of covered trading activities, I do not anticipate the need to hire new staff with particular expertise in order to calculate the required quantitative measurements (e.g., collect data and make computations).

I do not anticipate the need to develop additional infrastructure to obtain and retain data necessary to compute the proposed quantitative measurements.

These individuals and reporting processes are already in place except at those locations which most recently cause so much financial havoc in the market – and will continue to do so until the Act brings them back in compliance with reason and law.

Question 174. For each individual quantitative measurement that is proposed:

- **Is the use of the quantitative measurement to help distinguish between permitted and prohibited trading activities effective? If not, what alternative would be more effective? Does the quantitative measurement provide any additional information of value relative to other quantitative measurements proposed?**
- **Is the use of the quantitative measurement to help determine whether an otherwise-permitted trading activity is consistent with the requirement that such activity must not result, directly or indirectly, in a material exposure by the banking entity to high-risk assets and high-risk trading strategies effective? If not, what alternative would be more effective?**
- **What factors should be considered in order to further refine the proposed quantitative measurement to better distinguish prohibited proprietary trading from permitted trading activity? For example, should the timing of a calculation be considered significant in certain contexts (e.g., should specific quantitative measurements be calculated during the middle of a trading day instead of at the end of the day)?**
- **If the quantitative measurement is proposed to be applied to a trading unit that is engaged in activity pursuant to §§ __.4(a), __.5, or __.6(a) of the proposed rule, is the quantitative measurement calculable in relation to such activity? Is the quantitative measurement useful for determining whether underwriting, risk-mitigating hedging, or trading in certain government obligations is resulting, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies?**
- **Is the description of the quantitative measurement sufficiently clear? What alternative would be more appropriate or clearer? Is the description of the quantitative**

measurement appropriate, or is it overly broad or narrow? If it is overly broad, what additional clarification is needed? Should the Agencies provide this additional clarification in the appendix's description of the quantitative measurement? If the description is overly narrow, how should it be modified to appropriately describe the quantitative measurement, and why?

- Is the general calculation guidance effective and sufficiently clear? If not, what alternative would be more effective or clearer? Is more or less specific calculation guidance necessary? If so, what level of specificity is needed to calculate the quantitative measurement? What are the different calculation options and methodologies that could be used to reach the desired level of specificity? What are the costs and benefits of these different options? If the proposed calculation guidance is not sufficiently specific, how should the calculation guidance be modified to reach the appropriate level of specificity? For example, rather than provide this level of specificity in proposed Appendix A, should the Agencies instead make each banking entity responsible for determining the best method of calculating the quantitative measurement at this level of specificity, based on the banking entity's business and profile, which would then be subject to supervision, review, or examination by the relevant Agency? If the proposed calculation guidance is overly specific, why is it too specific and how should the guidance be modified to reach the appropriate level of specificity?

- Is the general calculation guidance for the measurement consistent with how banking entities currently calculate the quantitative measurement, if they do so? If not, how does the proposed guidance differ from methodology currently used by banking entities? What is the purpose of the current calculation methodology used by banking entities?

- What operational or logistical challenges might be associated with performing the calculation of the quantitative measurement and obtaining any necessary informational inputs?

- Is the quantitative measurement not calculable for any specific type of trading unit? If so, what type of trading unit, and why is the quantitative measurement not calculable for that type of trading unit? Is there an alternative quantitative measurement that would reflect the same trading activity but not pose the same calculation difficulty? Are there particular challenges to documenting that a specific quantitative measurement is not calculable?

- Is the quantitative measurement substantially likely to frequently produce false negatives or false positives that suggest that prohibited proprietary trading is occurring when it is not, or vice versa? If so, why? If so, what alternative quantitative measurement would better help identify prohibited proprietary trading?

- Should the quantitative measurement better account for distinctions among trading activities, trading strategies, and asset classes? If so, how? For example, should the quantitative measurements better account for distinctions between trading activities in cash and derivatives markets? If so, how? Are there any other distinctions for which the quantitative measurements may need to account? If so, what distinctions, and why?

• Does the quantitative measurement provide useful information as applied to all types of trading activities, or only a certain subset of trading activities? If it only provides useful information for a subset of trading activities, how should this issue be addressed? How beneficial is the information that the quantitative measurement provides for this subset of trading activities? Do any of the other quantitative measurements provide the same level of beneficial information for this subset of trading activities? Should the quantitative measurement be required to be reported for all trading activities, only a relevant subset of trading activities, or not at all?

• Does the quantitative measurement provide useful information as applied to all asset classes, or only a certain subset of asset classes? If it only provides useful information for a subset of asset classes, how should this issue be addressed? How beneficial is the information the quantitative measurement provides for this subset of asset classes? Do any of the other quantitative measurements provide the same level of beneficial information for this subset of asset classes? Should the quantitative measurement be required to be reported for all asset classes, only a relevant subset of asset classes, or not at all?

• Is the calculation period effective and sufficiently clear? If not, what alternative would be more effective or clearer?

• How burdensome and costly would it be to calculate the measurement at the specified calculation frequency and calculation period? Are there any difficulties or costs

associated with calculating the measurement for particular trading units? How significant are those potential costs relative to the potential benefits of the measurement in monitoring for impermissible proprietary trading? Are there potential modifications that could be made to the measurement that would reduce the burden or cost? If so, what are those modifications? Please quantify your answers, to the extent feasible.

For each individual quantitative measurement that is proposed:

• The use of the quantitative measurement to help distinguish between permitted and prohibited trading activities is effective.

• The use of the quantitative measurement to help determine whether an otherwise-permitted trading activity is consistent with the requirement that such activity must not result, directly or indirectly, in a material exposure by the banking entity to high-risk assets and

high-risk trading strategies is effective.

• There is no need to further refine the proposed quantitative measurement to better distinguish prohibited proprietary trading from permitted trading activity.

• When the quantitative measurement which is proposed to be applied to a trading unit that is engaged in activity pursuant to §§ __.4(a), __.5, or __.6(a) of the proposed rule, the quantitative measurement is calculable in relation to such activity. The quantitative measurement is

useful for determining whether underwriting, risk-mitigating hedging, or trading in certain government obligations is resulting, directly or indirectly, in a material exposure by the banking

entity to high-risk assets or high-risk trading strategies.

- The description of the quantitative measurement is sufficiently clear. There is no alternative which would be more appropriate or clearer at the present time and under the present prevailing circumstances of greed, tomfoolery, incompetence and outright lawlessness. The description of the quantitative measurement is appropriate and is neither overly broad nor narrow.

The Agencies should provide any additional clarification in the appendix's description of the quantitative measurement.

- The general calculation guidance is effective and sufficiently clear. More or less specific calculation guidance is unnecessary.
- The general calculation guidance for the measurement is consistent with how banking entities currently calculate the quantitative measurement. The purpose of the current calculation methodology used by banking entities is to ensure that profit is attained, however, sometimes this profit is excessive, parasitic and hinders commerce.
- There are no meaningful operational or logistical challenges that might be associated with performing the calculation of the quantitative measurement and obtaining any necessary informational inputs.
- The quantitative measurement not incalculable for any specific type of trading unit.
- The quantitative measurement substantially is not likely to frequently produce false negatives or false positives that suggest that prohibited proprietary trading is occurring when it is not, or vice versa.
- The quantitative measurement has no need to better account for distinctions among trading activities, trading strategies, and asset classes. It is sufficient as is. The Agencies, however, need to better account for their lax work ethics, unfair application of the regulations they are to regulate and their overall failure to do their jobs effectively if at all.
- The quantitative measurement provides useful information as applied to all types of trading activities, or only a certain subset of trading activities.
- The quantitative measurement provides useful information as applied to all asset classes, or only a certain subset of asset classes.
- The calculation period is effective and sufficiently clear. The delays that the Agencies are putting in the process of enabling the Act are not, however.
- There will be little burden and not to calculate the measurement at the specified calculation frequency and calculation period as modern computing techniques can make the work automatic – just as they have made the general operation of our financial industry a virtual fairyland of exotic mathematical formulae the computing environment can provide reasonable reporting and perform in the way it is expected rather than be exploited as it is currently being exploited and misused.

Question 175. In light of the size, scope, complexity, and risk of covered trading activities, are there certain types of quantitative measurements that will not be appropriate for some types of banking entities, desks, or levels? If so, would it be appropriate to require only certain quantitative measurements for such banking entities, desks, or levels?

In light of the size, scope, complexity, and risk of covered trading activities, there is not even one single solitary type of quantitative measurements that will not be appropriate for some types of banking entities, desks, or levels

Question 176. How might the number of quantitative measurements impact behavior of banking entities? Is there a cost of requiring more quantitative measurements, such as the cost of increased uncertainty regarding the combined results of such quantitative measurements? To what extent and in what ways might uncertainty as to how the quantitative measurements are applied and evaluated impact behavior?

The number of quantitative measurements will have very little impact on the behavior of banking entities that are currently abiding by the law and common sense. For the rest of the inept, corrupt and criminal firms in the industry they will be weeded out – some being jailed, most being thrown out of the business that the Agencies should have ejected them from or corrected them in long ago.

There is no appreciable cost of requiring more quantitative measurements, such as the cost of increased uncertainty regarding the combined results of such quantitative measurements because of the reduction in the cost of computing and data storage and transfer technologies. The Agencies should know this but outdated processes and convoluted behaviors have hid this from the Government Account Office that should be overseeing the Agencies but has left to themselves too long.

As to the extent and in what ways might uncertainty as to how the quantitative measurements are applied and evaluated impact behavior we may see many employees at the Agencies get dismissed as it becomes apparent their lack of expertise, professionalism and general knowledge about finance is. We may also see, like rats and roaches leaving a treated building, an exodus of criminals, ne'er-do-wells and incompetents from the financial industry – leaving the industry open for a breath of fresh air and return to the ability for it to provide financial services rather than drain the resources of this great nation.

Question 177. Is the overview of permitted market making-related activities and prohibited proprietary trading proposed in Appendix B accurate? If not, what alternative overview would be more accurate? Does the overview appropriately account for differences in market making-related activities across different asset classes? If not, which type of market making-related activity does the overview not sufficiently describe or account for?

The overview of permitted market making-related activities and prohibited proprietary trading proposed in Appendix B is accurate.

The overview appropriately accounts for differences in market making-related activities across different asset classes.

Question 178. Is the requirement that a market maker engaged in market making that is executed on an exchange or an organized trading facility must be a registered market maker, provided the relevant exchange or organized trading facility provides the ability to register, appropriate, or is it over- or under-inclusive? Please discuss and provide detailed examples of any such markets where registering as a market maker is not feasible or should not be required for purposes of this rule, and unregistered market makers provide similar services or perform similar functions.

The requirement that a market maker engaged in market making that is executed on an exchange or an organized trading facility must be a registered market maker, provided the relevant exchange or organized trading facility provides the ability to register is appropriate. It is neither over- nor under-inclusive

Question 179. With respect to market making that is executed on an exchange or an organized trading facility, what potential impact or unintended consequences might result from limiting the market making exemption to registered market makers when the relevant exchange or organized trading facility registers market makers? Would such a requirement result in any potential decrease in the passive provision of liquidity by the submission of resting orders? Do you anticipate that any such decrease would be exacerbated in times of market stress? If yes, please describe the impact on liquidity and the marketplace in general. Please discuss whether and how any potential decrease in liquidity could be mitigated. In addition, would such a requirement result in additional costs that would be borne by market participants purchasing and selling on an exchange or organized trading facility? Please identify and discuss any other additional costs. Please discuss whether and how any such consequences can be mitigated.

With respect to market making that is executed on an exchange or an organized trading facility, there is no discernible potential impact or unintended consequences that might result from limiting the market making exemption to registered market makers when the relevant exchange or organized trading facility registers market makers except that business will be conducted with reason, benefit, profit and tampering will be made difficult or removed from play.

Such a requirement would not result in any potential decrease in the passive provision of liquidity by the submission of resting orders.

I do not anticipate that any such decrease would be exacerbated in times of market stress.

Such a requirement would not result in additional costs that would be borne by market participants purchasing and selling on an exchange or organized trading facility.

Question 180. In addition to benefits discussed in the Supplementary Information, are

there other benefits that would be achieved by requiring that a market maker be registered with respect to market making on an exchange or an organized trading facility? Is there a way to amplify these benefits? Could these benefits be realized through alternative means? If so, how?

In addition to benefits discussed in the Supplementary Information, are there are no other benefits that are discernible at this time that would be achieved by requiring that a market maker be registered with respect to market making on an exchange or an organized trading facility.

If there were a way to amplify these benefits it would not be for the Agencies to be involved in. The Agencies, like the Federal Reserve, are confusing their roles and responsibilities and should cease to do so before they cause any more or lasting damage to our free enterprise system.

Question 181. In addition to registered market makers on exchanges or organized trading facilities, what other classes of liquidity providers exist? Are their obligations and activities similar to, or different than those of registered market makers? If so, how? Are the compensated in a different manner?

In addition to registered market makers on exchanges or organized trading facilities, there are several other classes of liquidity providers that exist such as REITs and Bonds – in fact the entire financial industry is capable of providing liquidity. This question seems baseless.

Their obligations and activities similar or different than those of registered market makers as may be the case at the individual banking entity or activity taking place.

They are compensated according to whatever activity or process has been decided on at the banking entity or other business location.

It seems to me that this question is revealing severe lack of information and understanding on the part of the Agencies or a concerted effort and intent to thwart or slow the process to put the Act into service.

Question 182. How much liquidity is provided by registered market makers versus other liquidity providers by asset class (e.g., equities, etc.) with respect to trading on an exchange or an organized trading facility? The Agencies encourage commenters to provide data in support of comments.

As for how much liquidity is provided by registered market makers versus other liquidity providers by asset class (e.g., equities, etc.) with respect to trading on an exchange or an organized trading facility that information is one of the myriad and sometimes meaningless bits of information that government agencies normally collect.

The Agencies should not entertain the collection of information from a few sources in order to determine actions for the general financial industry.

Question 183. Is there any specific element of market making-related activity that the overview does not take into account in its description of market making? If so, how should the overview account for this element? Are there any descriptions of market making-related activity in the overview that should not be considered to be market making-related activity? If so, why? Is there any specific element of prohibited proprietary trading activity that the overview does not take into account in its description of prohibited proprietary trading? If so, how should the overview account for this element? Are there any descriptions of prohibited proprietary trading activity in the overview that should not be considered to be prohibited proprietary trading? If so, why?

In regards to the Act there are not any specific elements of market making-related activity that the overview does not take into account in its description of market making.

In regards to the Act there are not any descriptions of market making-related activity in the overview that should not be considered to be market making-related activity.

In regards to the Act there are not any specific elements of prohibited proprietary trading activity that the overview does not take into account in its description of prohibited proprietary trading.

In regards to the Act there are not any descriptions of prohibited proprietary trading activity in the overview that should not be considered to be prohibited proprietary trading.

Question 184. Are each of the six factors specified for helping to distinguish permitted market making-related activity from prohibited proprietary trading appropriate? If not, how should they be changed, and why? Should any factors be eliminated or added? If so, which ones and why? Could any of the proposed factors occur as a result of the banking entity engaging in one of the other permitted activities (e.g., underwriting, trading on behalf of customers)? If so, would the facts and circumstances that the Agencies propose to consider be sufficient to determine and verify that the banking entity is not engaged in prohibited proprietary trading? If not, how should this issue be addressed?

Each of the six factors specified for helping to distinguish permitted market making-related activity from prohibited proprietary trading is appropriate.

All six of them are appropriate as it appears that due consideration has been done to use them as is.

It does not seem likely that any of the proposed factors would occur as a result of the banking entity engaging in one of the other permitted activities (e.g., underwriting, trading on behalf of customers).

The facts and circumstances that the Agencies propose to consider would not be sufficient to determine and verify that the banking entity is not engaged in prohibited proprietary trading.

This is a non-issue seemingly more important to confused bureaucrats rather than to financial industry professionals or lawmakers intent on ensuring that common sense and law prevail in the market.

Question 185. Are the facts and circumstances that would be used to determine whether

a banking entity's activities satisfy a certain factor appropriate? If not, how should they be changed, and why? Should any be eliminated or added? If so, which ones, and why?

The facts and circumstances that would be used to determine whether a banking entity's activities satisfy a certain factor are appropriate.

All of the facts and circumstances that would be used are appropriate because they seem a reasonable way to keep common sense and law and prudent financial dealings ahead of corruption, thievery and ineptitude.

Question 186. Are the identified quantitative measurements that the Agencies would use

to help assess a particular factor appropriate? If not, how should they be changed, and why? Should any be eliminated or added? If so, which ones, and why?

The identified quantitative measurements that the Agencies would use to help assess a particular factor are appropriate.

Question 187. What are the potential benefits and costs of incorporating into the proposed rule one or more numerical thresholds for certain quantitative measurements that, if reported by a banking entity, would require the banking entity to review its trading activities for compliance and summarize that review to the relevant Agency? Would such thresholds provide useful clarity to banking entities and/or market participants regarding the types of trading activities that merit additional scrutiny? Should numerical thresholds be used for any purposes other than highlighting trading activities that should be reviewed, the results of which would be reported to the relevant Agency? If so, for what purpose, and how and why?

The potential benefits and costs of incorporating into the proposed rule one or more numerical thresholds for certain quantitative measurements that, if reported by a banking entity, would require the banking entity to review its trading activities for compliance and summarize that review to the relevant Agency will be minimal to non-existent as the world of computing technology has evolved to the point that much of the information is already available.

Such thresholds would only satisfy the needs that they address and should not be used by the Agencies to attempt to provide useful clarity to banking entities and/or market participants regarding the types of trading activities that merit additional scrutiny.

The less the Agencies are needed to involve themselves in business the better.

The numerical thresholds should not be used for any purposes other than highlighting trading activities that should be reviewed, the results of which would be reported to the relevant Agency.

Question 188. For which of the relevant quantitative measurements might it be appropriate and effective to include a numerical threshold that would trigger banking entity review and explanation? How should a numerical threshold be formulated, and why? Should a numerical threshold for a single quantitative measurement be applied individually, or should the threshold instead be triggered by exceeding some combination of numerical thresholds for different measurements? For any particular threshold, what numerical amount should be used, and why? How would such numerical amount be consistent with a level at which further review and explanation is warranted? Should the amount vary by asset class or other characteristic? If so, how?

None of the relevant quantitative measurements might be appropriate and effective to change to include a numerical threshold that would trigger banking entity review and explanation.

A numerical threshold should not be formulated because the Agencies should not be doing that type of work. It would interfere in the business they are supposed to help regulate – and which they have failed at miserably.

A numerical threshold for a single quantitative measurement should not be applied individually nor should the threshold instead be triggered by exceeding some combination of numerical thresholds for different measurements.

The rest of the portions of this question seem irrelevant as they seem to undermine the purpose and usefulness of the Act while needlessly aggrandizing

Question 189. For each of the following illustrative examples of potential thresholds, is the threshold formulated effectively? If not, what alternative formulation would be more effective? Should the threshold formulation vary by asset class or other characteristic? If so, how and why? If the threshold was utilized, what actual numerical amount should be specified, and why? How would such numerical amount be consistent with a level at which further review and explanation is warranted? Should the numerical amount vary by asset class or other characteristic? If so, how and why?

None of the relevant quantitative measurements might be appropriate and effective to change to include a numerical threshold that would trigger banking entity review and explanation.

A numerical threshold should not be formulated because the Agencies should not be doing that type of work. It would interfere in the business they are supposed to help regulate – and which they have failed at miserably.

A numerical threshold for a single quantitative measurement should not be applied individually nor should the threshold instead be triggered by exceeding some combination of numerical thresholds for different measurements.

The rest of the portions of this question seem irrelevant as they seem to undermine the purpose and usefulness of the Act while needlessly aggrandizing and expanding meaningless and dangerous behaviors at the Agencies.

Question 190. Is the manner in which the proposed rule implements the limitations of section 13(d)(2) of the BHC Act effective and sufficiently clear? If not, what alternative would be more effective and/or clearer?

The manner in which the proposed rule implements the limitations of section 13(d)(2) of the BHC Act is effective and sufficiently clear.

Question 191. Is the proposed rule's definition of material conflict of interest effective and sufficiently clear? If not, what alternative would be more effective and/or clearer?

The proposed rule's definition of material conflict of interest is effective and sufficiently clear.

Question 192. Is the proposed definition of material conflict of interest over-or underinclusive? If so, how should the definition be broader or narrower? Is there an alternative definition that would be appropriate? If so, what definition? Why would that alternative definition better define material conflict of interest for purposes of implementing section 13 of the BHC Act?

The proposed definition of material conflict of interest is neither over nor underinclusive.

There is no reasonable alternative definition that would be appropriate.

Question 193. Would the proposed definition of material conflict of interest have any unintended chilling effect on underwriting, market making, risk-mitigating hedging or other permitted activities? If so, what alternatives might limit such an effect?

For the purpose of accuracy and clarity it would be preferable if the Agencies would define what they mean by 'chilling effect'.

If we are using the vernacular and street parlance that is loosely defined and ill-understood except by the rude persons using the jargon at hand then the proposed

definition of material conflict of interest clearly will not and does not have any ability to bring about a chilling effect on underwriting, market making, risk-mitigating hedging or other permitted activities.

It will clearly have an excluding effect on unreasonable, unethical and unlawful behaviors which are now so widespread in the financial industry and which, up till now, have not been properly corrected or even recognized by the Agencies as being immoral, illegal, incompetent, unproductive and dangerous to the sound financial institutions of the United States of America.

Question 194. Would the proposed definition of material conflict of interest lead to unintended consequences? If so, what unintended consequences and why? Please suggest modifications to the proposed definition that would mitigate those consequences.

The proposed definition of material conflict of interest lead would not lead to unintended consequences.

Question 195. Is it likely that the proposed definition of material conflict of interest would anticipate all future material conflicts of interest, particularly as the financial markets evolve and change? If not, what alternative definition would better anticipate future material conflicts of interest?

It is likely that the proposed definition of material conflict of interest would anticipate all future material conflicts of interest, particularly as the financial markets evolve and change.

Criminal behavior is criminal behavior – that will not change.

Unsound financial behavior is unsound financial behavior – that will not change.

What will change, however, is that, unlike in the past, criminals will be taken into account and inept participants in the financial industry will lose rather than be bailed out by government.

Question 196. Does the proposed rule provide sufficient guidance for determining when a material conflict of interest exists? If not, what additional detail should be provided? Should the Agencies adopt an approach similar to that under the securities laws, in which a material conflict of interest is not specifically defined?

The proposed rule provides sufficient guidance for determining when a material conflict of interest exists.

The Agencies should do what they are instructed to do and stop fishing for ways to avoid responsibility.

Question 197. Are there transactions, classes or types of transactions, or activities

inherent in underwriting, market-making, risk-mitigating hedging or other permitted activities that should not be prohibited but may be captured by the proposed definition of material conflict of interest? If so, what transactions and activities? Should they be permitted under the proposed rule? If so, why and under what conditions, if any? Conversely, are there transactions or activities that would be permitted under the proposed rule that should be prohibited? If so, what transactions and activities? Why should they be prohibited under the proposed rule?

There are no known or widely used critical transactions, classes or types of transactions, or activities inherent in underwriting, market-making, risk-mitigating hedging or other permitted activities that should not be prohibited but may be captured by the proposed definition of material conflict of interest.

There are apparently no transactions or activities that would be permitted under the proposed rule that should be prohibited.

Question 198. Please discuss the inherent conflicts of interest that arise from bona fide underwriting, market making-related activity, risk-mitigating hedging, or any other permitted activity, and provide specific examples of such inherent conflicts. Do you believe that such conflicts ever result in a materially adverse interest between a banking entity and a client, customer, or counterparty? How should the proposal address inherent conflicts that result from otherwise-permitted activities?

There are no inherent conflicts of interest that arise from bona fide underwriting, market making-related activity, risk-mitigating hedging, or any other permitted activity.

Question 199. Is the manner in which the proposed rule permits the use of disclosure in certain cases to address and mitigate conflicts of interest appropriate? Why or why not? Should additional or alternative requirements be placed on the use of disclosure to address and mitigate conflicts? If so, what additional and alternative requirements, and why? Is the level of detail and specificity required by the proposed rule with respect to disclosure appropriate? If not, what alternative level of detail and specificity would be more appropriate?

The manner in which the proposed rule permits the use of disclosure in certain cases to address and mitigate conflicts of interest is appropriate. The reason why is that it clearly has been well thought out and prepared – though the Agencies, through their lack of transparency and absence from the financial industry for so long might not recognize this.

Additional or alternative requirements should not be placed on the use of disclosure to address and mitigate conflicts.

The level of detail and specificity required by the proposed rule with respect to disclosure is appropriate.

Question 200. Should the proposed rule require written disclosure to a client, customer, or counterparty regarding a material conflict of interest? If so, please explain why written disclosure should be required. Are there certain circumstances where written disclosure should be required, but others where oral disclosure should be sufficient? For example, should oral disclosure be permitted for transactions in certain fast-moving markets or transactions with sophisticated clients, customers, or counterparties? If oral disclosure is permitted under certain circumstances, should subsequent written disclosure be required? Please explain.

The proposed rule should not require written disclosure to a client, customer, or counterparty regarding a material conflict of interest.

There are no certain circumstances where written disclosure should be required, but others where oral disclosure should be sufficient.

Oral disclosure should not ever be permitted for transactions in certain fast-moving markets or transactions with sophisticated clients, customers, or counterparties.

There are no such things as 'sophisticated clients, customer or counterparties'. The last time similar wording was used as if someone would seriously believe such balderdash, was, I could imagine, when Bernie Madoff was making a sales pitch to his stable of 'sophisticated clients, customers or counterparties'.

Question 201. Should the proposed rule provide further detail regarding the types of conflicts of interest that cannot be addressed and mitigated through disclosure? If so, what type of additional detail would be helpful, and why? Should the proposed rule enumerate an exhaustive or non-exhaustive list of conflicts that cannot be addressed and mitigated through disclosure? If so, what conflicts should that list include, and why?

The proposed rule should not provide further detail regarding the types of conflicts of interest that cannot be addressed and mitigated through disclosure.

The proposed rule should not enumerate an exhaustive or non-exhaustive list of conflicts that cannot be addressed and mitigated through disclosure.

Question 202. Should the proposed rule provide further detail regarding the frequency at which disclosure must be made? Should general disclosure be permitted for certain types of transactions, classes of transactions, or activities? For example, should a banking entity be permitted to make a one-time, written disclosure to a client, customer, or counterparty prior to engaging in a certain type of transaction or activity? Should general disclosure be permitted for certain types of clients, customers, or counterparties (e.g., highly sophisticated parties)? Please explain why specific disclosure (i.e., prior to each transaction, class of transaction, or

activity) would not be necessary under the identified circumstances. Are there any clients, customers, or counterparties that should be able to waive a material conflict of interest under certain circumstances? If so, under what circumstances would a waiver approach be appropriate and consistent with the statute? Please explain.

The proposed rule should not and does not need to provide for further detail regarding the frequency at which disclosure must be made.

General disclosure should not be permitted for any type of transactions, classes of transactions, or activities.

A banking entity should not be permitted to make a one-time, written disclosure to a client, customer, or counterparty prior to engaging in a certain type of transaction or activity.

General disclosure should not ever be permitted for certain types of clients, customers, or counterparties (e.g., highly sophisticated parties).

There is no such thing as 'highly sophisticated parties'. If the Agency is referring to companies or individuals that engage in fanciful financial trading, futures markets or derivatives using algorithm designed for a specific purpose or algorithms which produce a certain result or 'black box' programs – it should be made know that entities that utilize such 'black box' programs and processes are some of the ones that need to be weeded out the financial industry.

There are no clients, customers, or counterparties that should be able to waive a material conflict of interest under any circumstances.

Question 203. Should the proposed definition of material conflict of interest deem certain potential conflicts of interest to not be material conflicts of interest if a banking entity establishes, maintains, and enforces policies and procedures (other than information barriers) reasonably designed to prevent transactions, classes of transactions, or activities that would involve or result in a material conflict of interest? If so, for what types of potential conflicts? What policies and procedures would be appropriate? How would this approach be consistent with the purpose and language of the statute? Should such policies and procedures only be considered effective if they prevent the banking entity from receiving an advantage to the disadvantage of the client, customer, or counterparty?

The proposed definition of material conflict of interest should not deem certain potential conflicts of interest to not be material conflicts of interest if a banking entity establishes, maintains, and enforces policies and procedures (other than information barriers) reasonably designed to prevent transactions, classes of transactions, or activities that would involve or result in a material conflict of interest.

Question 204. Are there any particular types of clients, customers, or counterparties for

whom disclosure of a material conflict of interest should not be required under the proposal, consistent with the statute? Please identify the types of clients, customers, or counterparties for whom disclosure might not be necessary and explain. Why might disclosures be useful for some clients, customers, or counterparties, but not others? Please explain. What characteristics should a firm use in determining whether or not a client, customer, or counterparty needs a particular disclosure?

There are no particular types of clients, customers, or counterparties for whom disclosure of a material conflict of interest should not be required under the proposal, consistent with the statute.

Question 205. Are there additional steps that a banking entity that seeks to manage conflicts of interest through the use of disclosure should be required to take with regard to disclosure? If so, what steps?

There are no additional steps that a banking entity that seeks to manage conflicts of interest through the use of disclosure should be required to take with regard to disclosure.

Question 206. Are there circumstances in which disclosure might be impracticable or ineffective? If so, what circumstances, and why?

There are no reasonable and lawful circumstances in which disclosure might be impracticable or ineffective.

Question 207. Is the manner in which the proposed rule permits the use of information barriers to address and mitigate conflicts of interest appropriate? Why or why not? Should additional or alternative requirements be placed on the use of information barriers to address and mitigate conflicts? If so, what additional and alternative requirements, and why?

The manner in which the proposed rule permits the use of information barriers to address and mitigate conflicts of interest is appropriate. The reason why is because it seems a reasonable and lawful manner in which to carry out the work.

There should be no additional or alternative requirements be placed on the use of information barriers to address and mitigate conflicts.

Question 208. Should the proposed rule mandate the use of other means of managing potential conflicts of interest? If so, what specific means should be considered? How effective are any such methods as currently used? Can such methods be circumvented? If so, in what ways?

The proposed rule should not mandate the use of other means of managing potential conflicts of interest.

The effectiveness of any such methods as currently used would be matter of proprietary interest to individual banking entities.

Am I to understand that the Agencies are actually asking the question, "Can such methods be circumvented?"

Am I to further understand and accept with a straight face that the Agencies are asking, "If so, in what ways?" (in regards to circumventing these methods).

I am disappointed in the quality and timber of the questions as put forward by the Agencies in regards to the Act.

Question 209. What burdens or costs might be associated with the disclosure-related or information barrier-related requirements contained in the proposed definition of material conflict of interest? How might these burdens or costs be eliminated or reduced in a manner consistent with the purpose and language of section 13 of the BHC Act?

There are no detectable and appear to be no extraordinary burdens or costs that might be associated with the disclosure-related or information barrier-related requirements contained in the proposed definition of material conflict of interest – though companies conducting illegal or incorrect business activities might claim there are.

Question 210. Are there specific transactions, classes of transactions or activities that should be managed through consent? If so, what transactions or activities, and why? What form of consent should be required? What level of detail should any such consent include? Should consent only apply to certain conflicts and not others? If so, which conflicts? Are there circumstances in which obtaining consent might be impracticable or ineffective? Should consent be limited to certain types of clients, customers, or counterparties? If so, which clients, customers, or counterparties? Are there certain types of clients, customers, or counterparties for whom consent would never be sufficient? Are there additional steps that a banking entity that seeks to manage conflicts of interest through the use of consent should be required to take? Please specify such steps.

There are no specific transactions, classes of transactions or activities that should be managed through consent.

Consent should not only apply to certain conflicts and not others.

There are no circumstances in which obtaining consent might be impracticable or ineffective unless the consent is being elicited from criminals, dead people, non-existent corporations, underhanded governments or other ne'er-do-wells.

Consent should not be limited to certain types of clients, customers, or counterparties.?

There are not any certain types of clients, customers, or counterparties for whom consent would never be sufficient.

There are no additional steps that a banking entity that seeks to manage conflicts of interest through the use of consent should be required to take.

Question 211. What is the potential relationship between, and interplay of, the proposed rule and Section 621 of the Dodd-Frank Act regarding conflicts of interest relating to certain securitizations which contains a prohibition on material conflicts of interest?

The potential relationship between, and interplay of, the proposed rule and Section 621 of the Dodd-Frank Act regarding conflicts of interest relating to certain securitizations which contains a prohibition on material conflicts of interest is not of any interest in the present matter being decided upon. Such speculation provides no reasonable additional materials worthy of consideration regarding the decision that is at the heart of putting the Act into action.

Question 212. Should the proposed rule provide for specific types of procedures that would be more effective in managing and mitigating conflicts of interest than others? Do banking entities currently use certain procedures that effectively manage and mitigate material conflicts of interest? If so, please describe such procedures and explain why such procedures are effective. Is the proposed rule consistent with such procedures? Why or why not? What are the costs and benefits of modifying your current procedures in response to the proposed rule?

The proposed rule should not provide for specific types of procedures that would be more effective in managing and mitigating conflicts of interest than others.

Some banking entities currently use certain procedures that effectively manage and mitigate material conflicts of interest.

The procedures and reasons why such procedures are effective are proprietary in nature and the reason(s) they work would be particular to the place and time they are used, not to mention the character of the persons using them.

Question 213. Is the proposed rule's definition of a high-risk asset effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Should the proposed rule specify particular assets that are deemed high-risk per se? If so, what assets and why?

The proposed rule's definition of a high-risk asset is effective and sufficiently clear.

The proposed rule should not specify particular assets that are deemed high-risk per se as the idea of them being 'per se' is a personal opinion – per se.

Question 214. Is the proposed rule’s definition of a high-risk trading strategy effective and sufficiently clear? If not, what alternative would be more effective and/or clearer? Should the proposed rule specify particular trading strategies that are deemed high-risk per se? If so, what trading strategies and why?

The proposed rule’s definition of a high-risk trading strategy is effective and sufficiently clear.

The proposed rule should not specify particular trading strategies that are deemed high-risk per se – that is, per se and in fact it should not.

Question 215. Is the proposed rule’s approach to applying section 13 of the BHC Act’s restrictions related to covered fund activities and investments to those instances where a banking entity acts “as principal or beneficial owner” effective? If not, why? What alternative approach might be more effective in light of the language and purpose of the statute?

The proposed rule’s approach to applying section 13 of the BHC Act’s restrictions related to covered fund activities and investments to those instances where a banking entity acts “as principal or beneficial owner” is effective

There is no reasonable, lawful, prudent alternative approach which might be more effective in light of the language and purpose of the statute at the present time under present business circumstances.

Question 216. Does the proposed rule effectively address the circumstances under which an investment by a director or employee of a banking entity in a covered fund would be attributed to a banking entity? If not, why? What alternative might be more effective?

The proposed rule effectively address the circumstances under which an investment by a director or employee of a banking entity in a covered fund would be attributed to a banking entity.

Question 217. Does the proposed rule’s definition of “covered fund” effectively implement the statute? What alternative definitions might be more effective in light of the language and purpose of the statute?

The proposed rule’s definition of “covered fund” effectively implements the statute.

Question 218. Is specific inclusion of commodity pools within the definition of “covered

fund” effective and consistent with the language and purpose of the statute? Why or why not?

Specific inclusion of commodity pools within the definition of “covered fund” is effective and consistent with the language and purpose of the statute.

The reason why is that it clearly seems a prudent, reasonable, businesslike and lawful addition and inclusion. That’s why.

Summary : Above please find my answers to 218 of the questions posed by the Agencies.

Many of the questions had several parts.

At many times while reviewing the questions and discussing them with friends, family and colleagues I was struck by what appeared to be several problems with the logic of the questions asked.

The timbre and nature of the questions often evoked for me a specter of employees at the Agencies laboring under false belief systems – lacking morals, basic common sense, business aptitude and a misunderstanding of their duties and goals within the Agencies where they are working.

Furthermore, and unfortunately, it seemed to me that some of the questions have been posed not to collect responses for use or inclusion but to take up time and cause delay and otherwise obstruct the process necessary to bring the Act into operation.

It is clear that once the Act has been placed into operation the major changes that will be forced to take place first will be at the Agencies. They clearly have been misapplying rules, forsaking rules and generally being a nuisance and hindrance to common sense, honest trading, lawful behavior and profitable business.

The obfuscation is apparent and obvious throughout many of the questions posed in this set of questions. I am disappointed in the behavior of the Agencies but also satisfied that now that their behavior is clearly on review that the House of Representatives, the Senate, the Executive Branch and the Judicial Branch will do what is necessary to clear up this mess.

Hindsight is 20/20 – it would have been easy to avoid all these difficulties that we just passed through had the Agencies either done their duty properly – or had not been in existence at all. It has become my opinion that the latter is more apt.

I believe it is time, once the Act has been put properly into place and business begins to recover that the Agencies be given a thorough review. It is the patriotic duty of many of the employees of the Agencies to withdraw, retire and otherwise remove themselves from a questionable and harmful set of circumstances which is making their fellow

Americans suffer and has and is and will continue to be a source of unrest in the modern world.

Thank you for the opportunity to respond. I hope that you will prevail against the bureaucracy which so angrily has taken hold of our economic activities and shake it loose so we can all get back to work.

Alfred Brock

