April 16, 2012

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Department of the Treasury
Office of the Comptroller of the Currency
Docket No. OCC-2011-0014
RIN 1557-AD44

Board of Governors of the Federal Reserve System
Docket No. R-1432
RIN 7100 AD 82

Securities and Exchange Commission
Release No. 34-65545; File No. S7-41-11
RIN 3235-AL07

Federal Deposit Insurance Corporation
RIN 3064-AD85

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

OneChicago, LLC ("OneChicago" or "OCX")[1] appreciates the opportunity to comment on the Proposal, *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, proposed by the Federal Reserve Board ("FRB"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Securities and Exchange Commission ("SEC"), and the Commodity Futures Trading Commission ("CFTC," and collectively, the "Agencies") to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which contains prohibitions and restrictions on the ability of banking entities and nonbank financial companies supervised by the FRB to engage in proprietary trading, also known as the Volcker Rule.

[1] OneChicago is the only single stock futures ("SSFs") exchange; we provide a marketplace for trading futures on over 1,900 individual equities. SSFs were authorized by the Commodity Futures Modernization Act of 2000, which placed SSFs under the joint regulation of the CFTC and the SEC.

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OneChicago's comments are focused on section __.3 of the proposed rule and the exemptions for excluded positions thereunder, as well as the market making-related activities exemption outlined in section __.4.

I. The Agencies Should Include Market Making-Related Activities in Exchange-Traded Futures Among the List of Permitted Activities in Which a Covered Banking Entity May Engage.

Exchange-traded futures fall within the list of "covered financial positions" which section __.3 of the Agencies' proposed rule prohibits any covered banking entity from engaging as a principal in the sale or purchase of. However, subparagraph (d)(1) of the Volcker Rule exempts certain activities from the general prohibition on proprietary trading.[2] Among these exemptions are "market-making activities" by a covered banking entity. The Agencies included the exemption for "market-making activities" in the proposed rule in section __.4(b)(2)(iv). That section states that market making activity by a covered banking entity in securities, swaps, security-based swaps, municipal securities, and government securities is exempt from the general prohibition on proprietary trading. Absent from the list of permitted activities is market-making activities in exchange-traded futures.

The text of section 619 of the Dodd-Frank Act explicitly includes market making-related activities in exchange-traded futures as one of the permitted activities exempted from the prohibition on proprietary trading. Paragraph (d)(1)(B) of section 619 allows covered banking entities to purchase, sell, acquire, or dispose of the financial instruments described in subparagraph (h)(4) of section 619 in connection with market making-related activities.[3] Paragraph (h)(4) of section 619 includes, *inter alia*, "any contract of sale of a commodity for future delivery."[4] The text of section __.4(b)(2)(iv), as proposed, would exempt the financial instruments listed in paragraph (h)(4) of section 619 of the Dodd-Frank Act, but exclude futures contracts from among the types of financial instruments that fall within the permitted market-making exemption.

OneChicago believes that the exclusion of exchange-traded futures from the list of permitted market-making activities was not intentional. In order to comply with congressional intent, we recommend the Agencies amend section __.4(b)(2)(iv) to state that market-making activities in exchange-traded futures are among the permitted activities in which a covered banking entity may engage.

II. The Agencies Should Exclude OneChicago's Exchange of Future for Physical Transaction from the Definition of "Trading Account."

Activities that a banking entity is prohibited from taking part in depends on whether that activity is part of the banking entity's "trading account." The definition of "trading

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act § 619(d)(1).
[3] § 619(d)(1)(B).
[4] § 619(h)(4).

account" is provided in section 13(h)(6) of the Bank Holding Company Act of 1956 ("BHC Act"),[5] as amended by section 619 of the Dodd-Frank Act. The BHC Act defines "trading account" as "any account used for acquiring or taking positions in securities principally for the purpose of selling in the near-term (or otherwise with the intent to resell in order to profit from short-term price movements)."

However, section __.3(b)(2)(iii) of the proposed rule excludes from the definition of "trading account" positions under certain repurchase and reverse repurchase arrangements, as well as positions under securities lending transactions. Specifically, section __.3(b)(2)(iii)(A) excludes certain repurchase and reverse repurchase arrangements because such positions operate in economic substance as a secured loan, and are not based on expected or anticipated movements in asset prices. Similarly, section __.3(b)(2)(iii)(B) excludes positions under securities lending transactions because positions held under securities lending arrangements operate, in economic substance and function, as a means to facilitate settlement of securities transactions, and are not based on expected movements in asset prices.

OCX's Exchange of Future for Physical ("EFP") transaction should be excluded from the definition of "trading account" as well, because the EFP operates, in economic substance, as a securities lending transaction or equity-based repurchase agreement.

1. OneChicago's Exchange of Future for Physical Transaction is Economically Equivalent to an Equity Repurchase Arrangement.

Positions under the OCX EFP are equivalent to equity repurchase arrangements, and therefore, should be excluded from the definition of a "trading account" under the BHC Act. For the proprietary trading exclusion to apply to a repurchase agreement, section __.3(b)(2)(iii)(A) of the proposed rule requires that the banking entity "simultaneously agrees, in writing at the start of the transaction, to both purchase and sell a stated asset, at stated prices, and on stated dates or on demand with the same counterparty." The OCX EFP meets these requirements because it is the economic equivalent of a repurchase agreement.

The OCX EFP is a simultaneous agreement to sell the underlying stock and buy a proportionate number of SSFs (in the case of an EFP buyer). Thus, EFP buyers maintain delta exposure via their futures position while raising cash by selling their previously held stock position—in essence taking a secured loan. When the borrower (long EFP holder) is ready to pay back the loan, they can sell an EFP, thus flattening their futures position and re-establishing their long equity position. As you can see, the OCX EFP similarly operates in economic substance as a secured loan.

Section III.B.1.c.i. of the Notice of Proposed Rulemaking clarifies that the repurchase and reverse repurchase arrangement exclusion was proposed because such positions

[5] 12 U.S.C. § 1841 et seq.

operate in economic substance as a secured loan, and are not based on expected or anticipated movements in asset prices. There is no underlying price risk in an EFP because the stock and the SSF are equivalent.[6] The only risk involved in the OCX EFP is the interest rate risk incurred by each party as they switch positions.

Additionally, the OCX EFP is not based on expected or anticipated movements in asset prices. The OCX EFP is unrelated to any moves in the underlying security in the marketplace. The EFP is solely dependant on the price differential between the underlying and the future.[7] As such, price movements in the underlying stock bear no effect on our EFP transactions. Therefore, the OneChicago EFP transaction is the type of asset purchase and sale intended to be exempted from the statutory definition of trading account.

2. OneChicago's Exchange of Future for Physical Transaction is Equivalent to a Securities Lending Transaction.

Section __.3(b)(2)(iii)(B) of the proposed rule provides that positions under securities lending transactions will not fall under the definition of trading account to the extent that such account is used to acquire or take one or more covered financial positions that arise under a transaction in which the banking entity lends or borrows a security temporarily to or from another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such security, and has the right to terminate the transaction and to recall the loaned security on terms agreed to by the parties.

The OneChicago EFP transaction meets these requirements as well. The OCX EFP is essentially a synthetic stock loan, the primary purpose of which is for customers to monetize their equity position while maintaining their market exposure. Pursuant to the requirements of section __.3(b)(2)(iii)(B) of the proposed rule, the lender (purchaser) in an OCX EFP transaction necessarily retains the same economic interest and exposure to the lent security. When the lender sells the underlying stock and purchases the SSF, the stock position becomes flat due to the sale of the existing long stock position and the purchase of the SSF. Pursuant to the terms of the SSF, the EFP purchaser obligates himself to purchase back the lent security at a predetermined date. Thus, the lender retains all economic exposure to the underlying security as if he had never lent it. Furthermore, the OCX.NoDivRisk®, a single stock futures product used in the OCX EFP, adjusts for ordinary dividend distributions, thereby eliminating any dividend risk and further retaining the lender's economic exposure to the lent shares.

Section III.B.1.c.ii. of the Notice of Proposed Rulemaking clarifies that the securities lending exclusion was proposed because securities loans operate, in economic substance

[6] SSFs are Delta One products. Delta One products are a class of financial derivative that have no optionality and, as such, have a delta of one (or very close to one); that is, a 1% move in the underlying results in a nearly 1% move in the derivative.
[7] This price differential merely represents adjustments for dividends and interest.

and function, as a means to facilitate settlement of securities transactions, and are not based on expected or anticipated movements in asset prices. The OCX EFP, similar to securities lending transactions, operates to facilitate settlement of securities transactions. When the holder of a large equity position, such as a pension fund, enters into an EFP as a purchaser (lender), the lent securities are used to provide liquidity in the marketplace, prevent failed sales, and encourage the settlement of securities transactions.

Therefore, OCX EFPs, like securities lending transactions, are not the type of transactions intended to be covered by the statutory definition of trading account. The OCX EFP operates in economic substance as a repurchase arrangement or securities lending agreement, both of which are exempted from the definition of a trading account. Accordingly, positions under an OCX EFP should similarly be exempted from the definition of a trading account.

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OneChicago thanks the Agencies for the opportunity to comment on the proposed rule. We would be happy to further discuss any of these issues with the Agencies. If you have any questions or comments please feel free to contact me by email at tmccabe@onechicago.com or by phone at (312) 424-8512.

Sincerely,

Thomas G. McCabe

Thomas G. McCabe
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OneChicago, LLC