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December 21, 2013

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20552

The Honorable Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

Re: Volcker Rule and the Treatment of CDO TruPS

Dear Chairman Gruenberg, Comptroller Curry and Chairman Bernanke:

Community banks continue to be shocked and dismayed by the news that their ownership of collateralized debt obligations (CDOs) backed by trust preferred securities (TruPS) could be considered an “ownership interest” in a “covered fund” in violation of the Volcker Rule. Many community banks have been advised by their investment banks and brokers that not only do they have to divest themselves of their holdings by July 2015, but that there will be an immediate impairment to their investment under the OTTI accounting standards that must be recognized in earnings and regulatory capital prior to yearend. The magnitude of these immediate write downs is staggering—sometimes amounting to almost \$10 million in a single bank-- and in many cases means that not only are the bank’s earnings wiped out, but that capital is significantly impaired. In fact, ICBA has talked to several bankers who do not believe their banks will survive these potential write downs.

As you know, the intent of the Volcker Rule was to prohibit proprietary trading by the largest banks and the ownership of hedge funds and private equity funds. It was never the intent of the Volcker Rule to include the divestiture of legitimate holdings in TruPS pools. These pools were structured and sold beginning in 2000, always were highly rated, and performed well until the financial crisis of 2008. Community banks have every reason to believe they would have the right to own these investments until maturity.

Although ICBA appreciates the recent FAQ issued this past week concerning the applicability of the Volcker Rule to CDO TruPS, we were deeply disappointed that there was not further guidance on some of the legal questions concerning what is an "ownership interest" in a "covered fund." Specifically, most community banks own either junior, senior or debt tranches of TruPS pools and receive only principal and interest from the pool. They had no idea that a non-equity ownership in CDO TruPS would ever be considered an ownership interest in a covered fund.

To further complicate matters, the last paragraph of the FAQ does little to clarify the issue of whether they have an ownership interest. For instance, would the fact that sometimes their investment's cash flow is impacted by distributions from the underlying TruPS be determinative of whether the investment constitutes an ownership interest? In other words, does an investment in a TruPS pool become an "ownership interest" when the pool makes no income/loss determination but reduces payments from time to time when there is a shortfall in cash flow?

Furthermore, the FAQ indicates that "banks and their CDO sponsors" should determine whether the TruPS CDO pool can be restructured such that it becomes an entity that is not a "covered fund." However, the FAQ offers no recommendations as to how the pool could be restructured to make it a "conforming entity" and how the underlying TruPS instruments could be amended so that divestiture would not be required.

In short, ICBA believes there are enough ambiguities and questions concerning this issue that the agencies should act to suspend the applicability of the Volcker Rule to CDO TRUPS temporarily for a period of 60-90 days to allow time for these questions to be considered and resolved, and to avoid the potentially significant and irreversible impact to earnings and capital that many community banks would experience.

ICBA believes strongly that debt-like community bank investments in CDO TruPS should be completely exempted from the Volcker Rule as the proposal seemed to indicate. However, if the agencies do want to make these investments subject to the final rule, then they need to clearly indicate that position and whether there is a way to make these investments conform to the rule. Until then, we believe suspending that part of the rule pertaining to CDO TruPS while the underlying issues are being resolved is the appropriate action regulators should take to avoid an immediate and harmful impact to the community banking industry.

Thank you for your consideration of our requests.

Sincerely,



Camden R. Fine
President and CEO