Responses to Frequently Asked Questions Regarding the Commission's Rule under Section 13 of the Bank Holding Company Act (the "Volcker Rule")

June 10, 2014 (Updated February 27, 2015)

In responding to these Frequently Asked Questions ("FAQs"), the staff of the Divisions of Trading and Markets, Investment Management, and Corporation Finance ("staff") are providing guidance on the Commission's final rule implementing section 13 of the Bank Holding Company Act of 1956 ("BHC Act"), commonly referred to as the "Volcker Rule." Responses to these FAQs were prepared by and represent the views of the staff. They are not rules, regulations, or statements of the Commission. Further, the Commission has neither approved nor disapproved these interpretive answers.

The staff may update these questions and answers periodically. In each update, the questions added after publication of the last version will be marked with "MODIFIED" or "NEW."

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Background

Section 619 of the Dodd Frank Wall Street Reform and Consumer Protection Act added new section 13 to the BHC Act. Section 13 of the BHC Act generally prohibits banking entities from engaging in proprietary trading or from acquiring or retaining an ownership interest in, or sponsoring, a hedge fund or private equity fund ("covered fund"), subject to certain exemptions and limitations on those exemptions. Under section 13, "banking entity" means: (i) any insured depository institution; (ii) any company that controls an insured depository institution; (iii) any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and (iv) any affiliate or subsidiary of any of the foregoing entities.

The Commission, in coordination with the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Commodity Futures Trading Commission, adopted a final rule implementing section 13 on December 10, 2013 (*see* Release No. BHCA-1 (December 10, 2013), 59 FR 5536 (January 31, 2014) ("Adopting Release")). The Commission's rule applies to banking entities for which the Commission is the primary financial regulatory agency, including banking entities that are SEC-registered broker-dealers, security-based swap dealers, and investment advisers.

Responses to Frequently Asked Questions

Requirement to Record and Report Certain Quantitative Measurements

Question: To comply with the requirement to record and report quantitative measurements in § 255.20(d) and Appendix A, when must a banking entity with $50 billion or greater in trading assets and liabilities begin to measure and record the required metrics? When must the banking entity begin to report metrics data to the Commission?

Answer: A banking entity with trading assets and liabilities of at least $50 billion, as calculated under § 255.20(d)(1), must begin to measure and record the required metrics on a daily basis starting July 1, 2014. As explained below, this banking entity must report its daily metrics recorded during the month of July to the Commission by September 2, 2014.

Section 255.20(d)(2) provides that the threshold for reporting quantitative measurements under § 255.20(d)(1) is $50 billion beginning on June 30, 2014. This means that the first day for which daily metrics must be measured and recorded by a banking entity at the $50 billion threshold is July 1, 2014.

The final rule requires a banking entity at or above the $50 billion threshold to report metrics data for each calendar month within 30 days of the end of the month unless the Commission notifies the banking entity in writing that it must report on a different basis. However, if the reporting deadline occurs on a Saturday, Sunday, or federal holiday, then a banking entity may report the data on the next business day following the reporting deadline. Thus, the relevant banking entity must collect metrics data for the month of July and report that data by September 2, 2014. This banking entity has until September 2, 2014 to report metrics data under these circumstances because August 30, 2014 (which is 30 days after July 31, 2014) is a Saturday, and the following Monday on September 1, 2014 is a federal holiday. Beginning with information for the month of January 2015, the final rule requires this banking entity to report metrics data within 10 days of the end of each calendar month, unless the Commission notifies the banking entity in writing that it must report on a different basis.

Certain of the required metrics have a calculation period of 30 days, 60 days, and 90 days. For these measurements, the initial metrics report for the month of July may provide data for only a 30-day calculation period. Likewise, the metrics report due by September 30, 2014 may provide data for only a 30-day and 60-day calculation period. Beginning with the report due October 30, 2014, metrics reports must include data for all required calculation periods.

Question: May a trading desk span multiple affiliated banking entities? If a trading desk spans multiple affiliated banking entities, to which Agency(ies) should a banking entity report metrics?

Answer: The final rule defines trading desk to mean the smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof. As discussed in the preamble to the final rule, the Agencies expect that a trading desk would be managed and operated as an individual unit and should reflect the level at which the profit and loss of the traders is attributed. This approach allows more effective management of risks of trading activity by requiring the establishment of limits, management oversight, and accountability at the level where the trading activity occurs. It also

allows banking entities to tailor the limits and procedures to the type of instruments traded and markets served by each trading desk.

The definition of "trading desk" specifically recognizes that the desk may buy or sell financial instruments "for the trading account of a banking entity or an affiliate thereof." The preamble to the final rule explains that a trading desk may span more than one legal entity and thus employees may be working on behalf of multiple affiliated legal entities. Additionally, trades and positions managed by the desk may be booked in different affiliated entities. The rules require that if a single trading desk books positions in different affiliated legal entities, it must have records that identify all positions included in the trading desk's financial exposure and the legal entities where such positions are held.

Appendix A to the final rule provides that a banking entity with significant trading assets and liabilities must furnish periodic reports to the Agencies regarding a variety of quantitative measurements of their covered trading activities. If a trading desk spans multiple legal entities, it must report quantitative measurements to each of the agencies with jurisdiction under section 13 of the Bank Holding Company Act over any of the entities. For a trading desk that spans multiple affiliated banking entities, the quantitative measurements of Appendix A should be calculated at the level of the entire desk; calculations do not need to be performed separately for each subset of positions booked at the various banking entities that compose the trading desk. As indicated above, this same set of desk-wide measurements should be reported to each Agency that has authority under section 13 of the Bank Holding Company Act over any of the affiliated entities that compose the trading desk so that the Agency may understand the context of the trading activity and discharge its responsibility for the legal entity that the Agency supervises or regulates.

(NEW 11/13/14)

Question: Appendix A of the final rule provides that certain of the metrics required to be reported by banking entities under the final rule should include the limits set out in §§ 255.4 and 255.5 of the final rule. Since the limits required by §§ 255.4 and 255.5 of the final rule are not required to be established prior to the end of the conformance period, when would a banking entity need to report metrics that include these limits?

Answer: A banking entity must conform its activities and investments to the prohibitions and restrictions of the final rule implementing section 13 of the Bank Holding Company Act no later than the end of the conformance period.[1] During this conformance period, some banking entities are nonetheless required to report certain quantitative measurements to the appropriate Agency under Appendix A of the final rule.[2] Appendix A provides that Risk and Position Limits and Usage should include the limits set out in §§ 255.4 and 255.5 of the final rule and explains that a number of metrics such as Risk Factor Sensitivities, Value-at-Risk, and Stress Value-at-Risk relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market- making-related activities under § 255.4(b) and the risk-mitigating hedging activities under § 255.5.[3]

The limits required under the underwriting, market-making, and risk-mitigating hedging sections of the final rule must be in place by the end of the conformance period. A banking entity that reports metrics under Appendix A prior to the end of the conformance period need not report the limits required by §§ 255.4(a)(2)(iii), 255.4(b)(2)(iii), and 255.5(b)(1)(i) until the end of the conformance period. However, if such a banking entity already has in place or develops limits of the type described in §§ 255.4 and 255.5 prior to the end of the conformance period, the banking entity is urged to report such limits as part of its reporting of quantitative measurements to the appropriate Agency.

(NEW 12/23/14)

Question: Are the quantitative measurements that a banking entity reports under Appendix A of the final rule protected by the Freedom of Information Act ("FOIA")?

Answer: The staffs of the Agencies encourage banking entities subject to Appendix A to evaluate exemptions available under the FOIA for their reported metrics information and to request confidential treatment as appropriate. Some firms have stated that metrics data reported to the Agencies represent confidential proprietary information of the banking entity. Exemption 4 of the FOIA protects matters that are trade secrets and commercial or financial information obtained from a person that is privileged or confidential.[4] Other exemptions may also apply. We expect to maintain the confidentiality of the reported metrics information to the extent permitted by law.

(NEW 01/29/15)

Question: On what date do banking entities that currently are subject to metrics reporting under Appendix A of the final rule implementing section 13 of the BHC Act need to start reporting metrics within 10 days of the end of each calendar month?

Answer: The final rule implementing section 13 of the BHC Act required certain of the largest banking entities to report metrics for July 2014 data beginning in September 2014.[5] In particular, § 255.20(d)(3) of the rule provides that, unless the appropriate Agency notifies the banking entity in writing that it must report on a different basis, banking entities with $50 billion or more in trading assets and liabilities must report the information required by Appendix A for each calendar month within 30 days of the end of the relevant calendar month and beginning with information for the month of January 2015, within 10 days of the end of each calendar month.

The Agencies have received five months of metrics submissions to-date. Several banking entities that currently are subject to metrics reporting have requested that the Agencies maintain the 30-day period for reporting the required metrics through July 2015 (the end of the conformance period for proprietary trading activities). Banking entities have argued that additional time is needed to allow them to implement systems and processes in order to ensure overall data integrity and reliability.

The purpose of the shortened reporting schedule is to allow for more effective supervision of banking entities for compliance with section 13 and the final rule.[6] Staffs of the Agencies believe that, during the period firms are building their compliance programs, delaying the

shortened reporting period is consistent with that purpose. Accordingly, banking entities required to report metrics may report such information within 30 days of the end of the relevant calendar month through the report of metrics for the month of July 2015. This means that metrics for the month of July 2015 must be reported within 30 days of the end of the month, or August 31, 2015. Beginning with metrics for the month of August 2015, banking entities must submit metrics within 10 days of the end of the month. As a result, metrics for the month of August 2015 must be reported by September 10, 2015.

Permitted Trading in Domestic Government Obligations

(NEW 01/29/15)

Question: Are interest-only and principal-only STRIPS of notes and bonds issued by the U.S. Treasury considered "obligations of, or issued or guaranteed by, the United States" under 17 CFR 255.6(a)(1) of the final rule implementing section 13 of the BHC Act? Is the same true for securities reconstituted from STRIPS of U.S. Treasury notes or bonds?

Answer: Yes. Under the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities program, eligible Treasury securities are authorized to be separated into principal and interest components and transferred separately.[7] These separate principal and interest components are also referred to as "STRIPS." Like the fully constituted security, payments of principal and interest under these STRIPS are backed by the full faith and credit of the United States.[8] Thus, the interest-only and principal-only components are obligations of, or issued or guaranteed by, the United States that would qualify for the exemption provided under § 255.6(a)(1) of the final rule implementing section 13 of the BHC Act.

In addition, Treasury regulations allow financial institutions and government securities brokers or dealers to reassemble corresponding STRIPS into their fully constituted form.[9] This reconstituted security is also an obligation of, or issued or guaranteed by, the United States under § 255.6(a)(1) of the final rule.

Conformance Period

Question: How do the requirements of section 13 of the BHC Act and the final rule apply to a banking entity during the conformance period? For instance, must a banking entity deduct its investment in a covered fund from its tier 1 capital prior to the end of the conformance period?

Answer: The Board extended the statute's conformance period until July 21, 2015 ("Board Conformance Order").[10] The Board also has issued a statement of policy in which the Board clarified the activities and investments that are permissible during the conformance period.[11]

As explained in the Board Conformance Order, a banking entity must conform all of its proprietary trading activities and covered fund activities and investments to the prohibitions and requirements of section 13 and the final rule by no later than the end of the conformance period. During the conformance period, a banking entity is expected to engage in good-faith efforts, appropriate for its activities and investments that will result in the conformance of all of its

activities and investments to the requirements of section 13 and the final rule no later than the end of the conformance period. Good-faith efforts include evaluating the extent to which the banking entity is engaged in activities and investments that are covered by section 13 and the final rule, as well as developing and implementing a conformance plan that is appropriately specific about how the banking entity will fully conform all of its covered activities and investments by the end of the conformance period. In addition, under the Board Conformance Order, banking entities that have stand-alone proprietary trading operations are expected to promptly terminate or divest those operations. Moreover, banking entities should not expand activities and make investments during the conformance period with the expectation that additional time to conform those activities or investments will be granted.

As an example of how the conformance period works in practice, section 13(d)(4) of the BHC Act and § 255.12(d) of the final rule require a banking entity to deduct from the banking entity's tier 1 capital, as determined under § 255.12(c)(2) of the final rule, its permitted investments in all covered funds. A banking entity would not be required to make this deduction until the end of the conformance period, which is currently July 21, 2015. As noted above, a banking entity is expected to engage in good faith efforts during the conformance period so that it can comply with this requirement no later than the end of the conformance period. Notably, as specified in the final rule, certain metrics reporting requirements will be in place before the end of the conformance period for banking entities with $50 billion or greater in trading assets and liabilities.

Covered Fund Definition

Question: Are the "rights or other assets" described in § 255.10(c)(8)(i)(B) ("servicing assets") limited to "permitted securities," or can other assets be servicing assets for purposes of the loan securitization exclusion?

Answer: The exclusion from the definition of covered fund for loan securitizations provides that, in addition to loans, a loan securitization may hold rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset meets the requirements of § 255.10(c)(8)(iii) of the final rule.

Under the final rule, servicing assets may be any type of asset. However, any servicing asset that is a security must be a permitted security under § 255.10(c)(8)(iii). Permitted securities under this section include cash equivalents and securities received in lieu of debts previously contracted as set forth in § 255.10(c)(8)(iii). The preamble to the final rule provides additional detail on the meaning of cash equivalents, noting that the Agencies interpret "cash equivalents" to mean high quality, highly liquid short term investments whose maturity corresponds to the securitization's expected or potential need for funds and whose currency corresponds to either the underlying loans or the asset-backed securities.

Question: The final rule excludes from the definition of covered fund a registered investment company and business development company, including an entity that is formed and operated pursuant to a written plan to become one of these entities. Would an

entity that is formed and operated pursuant to a written plan to become a foreign public fund receive the same treatment?

Answer: Section 255.10(c)(12) of the final rule explicitly excludes an issuer that is registered as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), or that is formed and operated pursuant to a written plan to become a registered investment company ("RIC") in accordance with the banking entity's compliance program as described in § 255.20(e)(3), and that complies with the requirements of section 18 of the Investment Company Act (15 U.S.C. 80a-18).[12] Section 255.10(c)(1) of the final rule also excludes from the definition of covered fund a foreign public fund that is an issuer that is organized or established outside of the United States; is authorized to offer and sell ownership interests to retail investors in the issuer's home jurisdiction; and sells ownership interests predominantly through one or more public offerings outside of the United States. Foreign public funds that meet these qualifications are therefore treated the same as RICs for purposes of the definition of "covered fund" under the final rule. Although the final rule excludes from the definition of covered fund certain seeding vehicles that will become RICs, as discussed above, the final rule does not address a seeding vehicle that will become a foreign public fund.

Staffs of the Agencies believe that, with respect to determining whether an entity is a covered fund, it would be appropriate that an issuer that will become an excluded foreign public fund be treated during its seeding period the same as an issuer that will become an excluded RIC. Accordingly, staffs of the Agencies do not intend to advise the Agencies to treat as a covered fund under the final rule an issuer that is formed and operated pursuant to a written plan to become a qualifying foreign public fund. Any written plan would be expected to document the banking entity's determination that the seeding vehicle will become a foreign public fund, the period of time during which the vehicle will operate as a seeding vehicle, the banking entity's plan to market the vehicle to third-party investors and convert it into a foreign public fund within the time period specified in § 255.12(a)(2)(i)(B) of subpart C, and the banking entity's plan to operate the seeding vehicle in a manner consistent with the investment strategy, including leverage, of the issuer upon becoming a foreign public fund. For purposes of the definition of covered fund, this would treat an issuer that becomes a qualifying foreign public fund the same as an issuer that becomes a RIC during the seeding period for the fund.

(NEW 11/13/14)

Question: How are certain mortgage-backed securities issuers sponsored by government-sponsored enterprises ("GSEs") treated under the final rule's covered funds provisions?

Answer: Section 255.10(c)(12)(ii) of the final rule excludes from the definition of a covered fund an issuer that may rely on an exclusion or exemption from the definition of "investment company" under the Investment Company Act of 1940 other than the exclusions contained in section 3(c)(1) and 3(c)(7) of that Act. The SEC has stated that, "certain federally sponsored structured financings, such as those sponsored by the Federal National Mortgage Association, are exempted from the [Investment Company] Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities and wholly owned corporations of such instrumentalities."[13] To the extent that an issuer may rely on section 2(b) of the Investment Company Act, the issuer would be relying on an exemption from regulation under

the Investment Company Act other than the exclusions contained in section 3(c)(1) or 3(c)(7), and thus would qualify for the exclusion from the covered fund definition provided by § 255.10(c)(12)(ii) of the final rule.

Organizing and Offering a Covered Fund

Question: Section 255.11 of the final rule provides that a banking entity may acquire and retain an ownership interest in a covered fund that the banking entity organizes and offers, subject to a number of conditions. Among other things, these conditions require that the covered fund, for corporate, marketing, promotional or other purposes does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof). What does it mean for a covered fund to share the same name or a variation of the same name with a banking entity?

Answer: A covered fund that is organized and offered by "banking entity A" may not share the same name or a variation of the same name as "banking entity A," nor may it share the same name or a variation of the same name as any affiliate of "banking entity A." Additionally, the final rule prohibits a covered fund from using the word "bank" in its name.

Similar restrictions on a fund sharing the same name, or variation of the same name, with an insured depository institution or company that controls an insured depository institution or having the word "bank" in its name, have been used previously in order to prevent customer confusion regarding the relationship between such companies and a fund.[14] In order to comply with § 255.11(a)(6) of the final rule and not be considered to share the same name or variation of the same name with a banking entity, the name of a covered fund must be sufficiently distinct from the name of the banking entity that the covered fund's use of the name would not likely lead to customer confusion regarding the relationship between the banking entity and the covered fund. For instance, a covered fund would generally be considered to share the same name or a variation of the same name with a banking entity if the name of the fund features the same root word, initials or a logo, trademark, or other corporate symbol that is also used by, or that clearly references a connection with, the banking entity, including any affiliate of the banking entity. Additionally, materials used to market, promote, or offer the fund may not contain any statements that would mislead an investor into thinking that the banking entity or any of its affiliates, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or any covered fund in which such covered fund invests.

Annual CEO Attestation

(NEW 09/10/14)

Question: Under the final rule, banking entities subject to the enhanced minimum standards for compliance programs under Appendix B of the final rule must provide an annual CEO attestation regarding the banking entity's compliance program. When must the first annual CEO attestation required under Appendix B be provided to the relevant Agency?

Answer: Appendix B of the final rule provides that, based on a review by the CEO of the banking entity, the CEO of the banking entity must, annually, attest in writing to the relevant Agency that the banking entity has in place processes to establish, maintain, enforce, review, test and modify the compliance program established under Appendix B and § 255.20 of the final rule in a manner reasonably designed to achieve compliance with section 13 of the BHC Act and the final rule.[15]

As noted in the Board Order extending the conformance period under section 13 of the BHC Act, each banking entity must conform its proprietary trading activities and covered fund activities and investments to the prohibitions and requirements of section 13 and the final rule by no later than the end of the conformance period. As a result, banking entities must meet the compliance program requirements of the final rule by the end of the conformance period, which is currently July 21, 2015.

The CEO attestation under Appendix B of the final rule is an annual requirement. The staffs of the Agencies believe that banking entities subject to Appendix B as of the end of the conformance period should submit the first CEO attestation required under Appendix B after the end of the conformance period but no later than March 31, 2016. A banking entity may provide the required annual attestation in writing at any time prior to the March 31 deadline to the relevant Agency. This allows the CEO time to review the design and operation of the entity's compliance program after the program is fully implemented to ensure it is reasonably designed to achieve compliance with section 13 and the final rule. Banking entities that become subject to Appendix B after the end of the conformance period should submit their first CEO attestation within one year of becoming subject to Appendix B.[16] Thereafter, banking entities should provide the CEO attestation annually within one year of its prior attestation.

SOTUS Covered Fund Exemption: Marketing Restriction

(NEW 02/27/15)

Question: **Section 13(d)(1)(I) of the Bank Holding Company Act ("BHC Act") and section § 255.13(b) of the final rule provide an exemption for certain covered fund activities conducted by foreign banking entities (the "SOTUS covered fund exemption") provided that, among other conditions, "no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States" (the "marketing restriction"). Does the marketing restriction apply only to the activities of a foreign banking entity that is seeking to rely on the SOTUS covered fund exemption or does it apply more generally to the activities of any person offering for sale or selling ownership interests in the covered fund? Sponsors of covered funds and foreign banking entities have asked how this condition would apply to a foreign banking entity that has made, or intends to make, an investment in a covered fund where the foreign banking entity (including its affiliates) does not sponsor, or serve, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to, the covered fund (a "third-party covered fund").**

Answer: The staffs of the Agencies believe that the marketing restriction applies to the activities of the foreign banking entity that is seeking to rely on the SOTUS covered fund exemption

(including its affiliates). This is also reflected in the preamble discussion of the marketing restriction and the structure of the final rule as discussed below.

Consistent with Section 13(d)(1)(I) of the BHC Act, the marketing restriction in the final rule provides that "no ownership interest in the covered fund is offered for sale or sold to a resident of the United States." Section § 255.13(b)(3) of the final rule provides that an ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of the marketing restriction if it is sold or has been sold pursuant to an offering that does not target residents of the United States. In describing the marketing restriction in the preamble, the Agencies stated that the marketing restriction serves to limit the SOTUS covered fund exemption so that it "does not advantage foreign banking entities relative to U.S. banking entities with respect to providing *their* covered fund services in the United States by prohibiting the offer or sale of ownership interests in *related* covered funds to residents of the United States."[17]

The marketing restriction, as implemented in the final rule, constrains the foreign banking entity in connection with its own activities with respect to covered funds rather than the activities of unaffiliated third parties, thereby ensuring that the foreign banking entity seeking to rely on the SOTUS covered fund exemption does not engage in an offering of ownership interests that targets residents of the United States.

This view is consistent with limiting the extraterritorial application of section 13 to foreign banking entities while seeking to ensure that the risks of covered fund investments by foreign banking entities occur and remain solely outside of the United States.[18] If the marketing restriction were applied to the activities of third parties, such as the sponsor of a third-party covered fund (rather than the foreign banking entity investing in a third-party covered fund), the SOTUS covered fund exemption may not be available in certain circumstances where the risks and activities of a foreign banking entity with respect to its investment in the covered fund are solely outside the United States.[19]

A foreign banking entity (including its affiliates) that seeks to rely on the SOTUS covered fund exemption must comply with all of the conditions to that exemption, including the marketing restriction. A foreign banking entity that participates in an offer or sale of covered fund interests to a resident of the United States thus cannot rely on the SOTUS covered fund exemption with respect to that covered fund. Further, where a banking entity sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, that banking entity will be viewed by the staffs as participating in any offer or sale by the covered fund of ownership interests in the covered fund, and therefore such foreign banking entity would not qualify for the SOTUS covered fund exemption for that covered fund if that covered fund offers or sells covered fund ownership interests to a resident of the United States.

[1] *See* Federal Reserve System, Order Approving Extension of Conformance Period (Dec. 10, 2013), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf.

[2] *See* 17 CFR 255.20(d).

[3] *See* Appendix A, 79 FR 5536 at 5798.

[4] *See* 5 U.S.C. § 552(b)(4). Banking entities may request that the SEC provide confidential treatment to submitted materials pursuant to SEC Rule 83. 17 CFR 200.83. *See also* http://www.sec.gov/foia/conftreat.htm.

[5] *See* 17 CFR 255.20(d)(2). Staffs of the Agencies previously issued an FAQ stating that a banking entity with trading assets and liabilities of at least $50 billion, as calculated under § 255.20(d)(1), must begin to measure and record the required metrics on a daily basis starting July 1, 2014 and report its daily metrics recorded during the month of July by September 2, 2014.

[6] *See* 79 FR at 5765 n.2689.

[7] 31 CFR 356.4.

[8] *See* 51 FR 29,085, 29,088—89 (Aug. 14, 1986) (OCC interpretive ruling citing Memorandum from Walter T. Eccard, Assistant General Counsel for Banking and Finance, Department of the Treasury, to Jordan Luke, Deputy Chief Counsel (Policy), OCC (May 29, 1986)); *accord* Call Report Glossary, at at A-14b (Dec. 2014). ("Even after the interest or principal portions of U.S. Treasury STRIPS have been separately traded, they remain obligations of the U.S. Government.").

[9] 31 CFR 356.31(d); *see also* http://www.treasurydirect.gov/instit/marketables/strips/strips.htm.

[10] *See* Board Order Approving Extension of Conformance Period, *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf.

[11] *See* Statement of Policy Regarding the Conformance Period for Entities Engaged in Proprietary Trading or Private Equity Fund and Hedge Fund Activities, 77 FR 33,949 (June 8, 2012).

[12] The final rule also explicitly excludes an issuer that has elected to be regulated as a business development company ("BDC") pursuant to section 54(a) of that Act (15 U.S.C. 80a-53) and has not withdrawn its election, or that is formed and operated pursuant to a written plan to become a BDC as described in § 255.20(e)(3) and that complies with the requirements of section 61 of the Investment Company Act of 1940 (15 U.S.C. 80a-60).

[13] *See* Exclusion From the Definition of Investment Company for Certain Structured Financings, Investment Company Act Rel. No. 18736 (June 5, 1992). In addition, staff in the SEC's Division of Investment Management have taken the position, based on the facts and representations presented to the staff in each case, that certain GSE-sponsored mortgage-backed

securities issuers would not be required to register under the Investment Company Act in reliance on section 2(b) of that Act. *See, e.g.*, Federal National Mortgage Association, SEC No-Action Letter (May 25, 1988) (expressing the staff's view that the Federal National Mortgage Association ("Fannie Mae") "is excluded from the 1940 Act under Section 2(b) as an instrumentality of the United States" and that Fannie Mae, rather than certain trusts, is the issuer for purposes of sections 3(a)(1) and 3(a)(3) of the Investment Company Act).

[14] *See, e.g.*, 12 CFR 225.125(f); *Bank of Ireland*, 82 Fed. Res. Bull. 1129, 1132 (1996).

[15] 17 CFR Part 255, Appendix B.

[16] For example, a banking entity with between $25 billion and $50 billion in trading assets and liabilities, as described in §§ 255.20(c)(1) and (d), will be required to implement an enhanced compliance program by April 30, 2016. This banking entity would be required to provide its first CEO attestation to the relevant Agency by April 30, 2017.

[17] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 FR 5536 at 5742 (Jan. 31, 2014) (emphasis added).

[18] *See id.* at 5740.

[19] The staffs also note that foreign funds that sell securities to residents of the United States in an offering that targets residents of the United States will be covered funds under section § 255.10(b)(i) of the final rule if such funds are unable to rely on an exclusion or exemption under the Investment Company Act other than section 3(c)(1) or 3(c)(7) of that Act. If the marketing restriction were to apply more generally to the activities of any person (including the covered fund itself), the applicability of the SOTUS covered fund exemption would be significantly limited because a third-party foreign fund’s offering that targets residents of the United States would make the SOTUS covered fund exemption unavailable for all foreign banking entity investors in the fund. The Agencies’ discussion of the SOTUS covered fund exemption in the preamble does not suggest that the Agencies understood the SOTUS covered fund exemption to have such a limited application.