Written Statement of Kenneth E. Bentsen, Jr.

on behalf of the Securities Industry and Financial Markets Association

before the House Committee on Financial Services

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Chairman Hensarling, Ranking Member Waters, and members of the Committee. My name is Ken Bentsen and I am President and CEO of the Securities Industry and Financial Markets Association (SIFMA)[1]. Thank you for providing me the opportunity to testify before you today regarding our member firms' concerns about the final regulations implementing the statutory text of what has come to be known as the Volcker Rule[2]. SIFMA represents a broad range of financial services firms active in capital markets all of whom are dedicated to promoting investor opportunity, access to capital, loans to families and businesses, and an efficient market system that stimulates economic growth and job creation. America's economic success depends on a vibrant financial system that provides reliable access to capital and credit and it is with that belief in mind that I appear here today.

The concept that proprietary trading by banks and their affiliates should be prohibited and fund investments should be restricted sounds fairly straight forward. At the level where the regulation impacts real businesses and investors in the real economy, time and experience have shown that it is, in fact, exceedingly complex. Those who have grappled with the Volcker Rule at

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[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] In this testimony, I will refer to the final Volcker Rule to mean the combination of the final regulations and the statutory text that they implement.

any level deeper than that of a media sound bite know that balancing the statutory mandate to both prohibit and permit certain activities and investments in a way that does not harm the capital markets and the businesses, governments and investors who rely on those markets, is a very serious business and horribly complex. Indeed, Congress struggled with the complex statutory text which became the Volcker Rule and for three and a half long years, five different regulatory agencies, plus the FSOC and the Department of the Treasury have strived to find a balance of prohibitions, exemptions, restrictions and compliance regimes which will be faithful to the statutory text's mix of prohibitions and exemptions as well as the overarching policy goal not to harm the real economy. It is no wonder that the proposed rule posed over 1,300 questions and that the final rule runs 71 pages with nearly 900 pages of commentary attached to it and we are not surprised that it took the regulators a long time to complete the Rule so we are appreciative of the attention with which they approached an exceedingly difficult task.

That being said, SIFMA and our members still believe the Volcker Rule is a policy response in search of a problem and we remind the Committee that no other country has adopted anything at all similar to the Volcker Rule. It is, however, the law of the land and our members are committed to complying fully with the rule and making the required changes and putting in place conformance plans and compliance programs. The capital markets have raised more than $6.3 trillion over the past six years for U.S. companies in more than 78 different business sectors and any regulation that could so negatively affect that lifeblood of the economy will need to be monitored. Our member firms will work closely with the regulators and if necessary, the Congress, to ensure a smooth implementation with as limited an impact as possible on the broader economy.

There is no doubt that the final Volcker Rule, as it was intended, will bring about changes in our markets. The Rule represents a significant and complex change that will impact every single bank and its capital markets affiliates in the U.S. and globally, no matter its size. As the Volcker Rule comes into full force, it will affect many markets and products. The agencies have appropriately extended the conformance period to provide the financial sector and the markets time to prepare though there will undoubtedly be many unintended consequences. We caution, however, that the Volcker Rule's complexity will inevitably raise a number of interpretive issues and it is important that these be resolved thoughtfully. We will work with the regulators and legislators to ensure appropriate treatment. For example, in the short term we expect, as noted below, questions with respect to the treatment of the required metrics and we would seek to continue the dialogue as to the appropriate and consistent approach for this important requirement.

Our preliminary assessment shows that beyond the general market quality impact that will result from the significant compliance costs associated with engaging in permitted activities, the following markets/areas will be impacted: venture capital, normal corporate structures such as equity joint ventures and acquisition vehicles, municipal financing via tender option bonds, loan and other securitizations, asset-backed commercial paper, commercial loans and lending via CLOs, CDOs and the trading of foreign sovereign debt.

Regarding CLOs, we have included as appendices to this testimony two letters that SIFMA and other trade groups sent to the regulators requesting guidance related to the definition of ownership interest in the final rule as it relates to CLO transactions. We believe that guidance such as we have requested would allow holders of CLO securities to become comfortable that they did not hold ownership interests, and that their holdings were permissible under the Volcker Rule. We continue to strongly encourage the regulators to issue such guidance so as to avoid disruptions to the CLO market, and increases in the cost of credit to the Main Street businesses that benefit from the market. We note that Members of Congress have introduced legislation that would allow banks to continue to hold securities issued by CLOs if they were issued before December 10, 2013 and we support the goals of this legislation. Indeed, we believe that the relief afforded by any legislation to TruPS CDOs should also be granted to CLOs – the definition of ownership interest is a common problem and the consequences of inaction regarding CLOs are very high. That being said, we hope that guidance from the regulators would take a principles-based approach and is therefore the preferable approach.

Our members are also beginning to focus on the conformance plans and the intense compliance programs that the final regulation requires. But this work by our member firms is not the end of the story. Just as the financial sector will have to develop and implement conformance plans, compliance programs, internal controls, independent testing and auditing, training and records retention, so too will regulators have more work to do to explain what certain provisions mean and how they are intended to work. A final regulation as significant as the final Volcker Rule, with broad market impacts and a global reach, will not be simple to implement, examine or supervise. In order to lessen the potential negative market impacts, regulators should consider, as issues arise, giving particular markets or products additional time to comply. Most importantly, just as the five regulators ultimately coordinated to write one rule they must now coordinate and be consistent in their interpretation, examination, supervision and enforcement of the final regulations. A lack of consistency will not only create unnecessary and costly confusion for the industry, our clients and the markets, it will undermine the Rule itself.

The lack of an explicit mechanism or process for ongoing regulatory coordination and resolution of interpretive, examination, supervision and enforcement differences has emerged as our member firms' greatest initial concern. The law tasked five different regulators, the Commodity Futures Trading Commission, Federal Reserve Board, Federal Deposit Insurance Corporation, Comptroller of the Currency and the Securities and Exchange Commission with writing the rule, but it did not task any one agency or the agencies collectively with the interpretation, examination, supervision or enforcement of final regulations. As firms (including global firms, smaller firms and regional banking entities that are now subject to these new compliance requirements) develop these procedures, a failure to have a clear, transparent and consistent approach to address and resolve regulatory issues will only increase costs and delay achievement of the regulatory goals. Without a defined process or mechanism there is a significant risk that agencies will have differing interpretations of similar provisions or activities covered by the Volcker Rule, resulting in inconsistencies in their examination, supervision and enforcement. This will undoubtedly raise additional compliance liabilities that will cause firms to needlessly restrict activities that are otherwise explicitly allowed, the net effect of which being the restriction of capital committed to certain markets and the resultant reduction in liquidity.

Let us consider some examples. What happens if the SEC, and its examiners, takes one point of view for the broker-dealer while the OCC takes another point of view for the national bank in the same affiliated institution? Now add in the complexity of the CFTC reviewing the activities of the national bank for its registered swap dealer activities. What if the FDIC takes one view for nonmember banks and the Federal Reserve another for member banks? What if regulators in other jurisdictions impose requirements that are incompatible with the approach required by one or more U.S. regulators?

As you know, the basic building block of the trading provisions of the final regulations is **not** a legal entity or functional regulation approach of the type we have traditionally seen. Instead, the basic building block is the trading desk which the agencies have made crystal clear is meant to cross legal entities. As a result, all compliance programs and metrics reporting will also cut across legal entities and the traditional system of functional regulation. The reality is that each trading desk could be subject to examination by multiple agencies.

This concern is significant as we move deeper into firms' planning for conformance, implementation and development of compliance regimes. For example, a number of the largest financial institutions must begin tracking certain metrics of their activities by July of this year with the first reports due by the end of August. A rush to meet this deadline, particularly in light of the long delays that followed the expiration of the comment period, will have ramifications for both the regulated bodies and the regulators. Our members have concerns as to how each agency will interpret the metrics described in the Rule, as well as how and to which agency they will be reported. Differences in approach across the agencies would make metrics reporting almost impossible, especially given the fact that metrics reporting will have to be programmed into computer systems. Inconsistency in approach could also undermine the transparency and the comparability of the information from institution to institution, thus making the information far less valuable.

Regrettably, the final regulations are completely silent on regulatory coordination. The final Volcker Rule does not address how interpretations and guidance will be meted out, how examinations will be coordinated in form and result, how the agencies will work together in supervision in any respect, or how various cross-border compliance and coordination issues will be addressed. It is completely unclear how the agencies plan to coordinate their efforts and avoid duplicative actions and undue costs and burdens on virtually every banking organization in the country.

The agencies acknowledged concerns about overlapping jurisdictional authority but while they noted an intent "to coordinate their examination and enforcement proceedings to the extent possible and practicable", they provided absolutely no guidelines or procedure on how to do so.

Indeed, we understand from our members that one of the lessons learned from the entire TruPS CDO and CLO problem is that no one agency can render an interpretation and getting five different agencies to agree requires more time. We believe that the top near-term goal should be for the agencies to articulate a transparent and consistent roadmap for coordination on both near-term interpretive guidance and the long-term examination and supervisory framework, including realistic goals on quantitative reporting that prioritize utility of the data. Any delay in providing transparency around structural coordination risks creating confusion that could disrupt our capital markets and the flow of credit to our broader economy, and may very well impede our members' ability to meet already tight compliance timelines. A roadmap for coordination should seek ultimately to ensure consistency in interpretation across agencies with guidance consistently applied.

We believe it is incumbent upon the FSOC to exercise its authority to coordinate supervisory activities with respect to the Rule, as Congress provided for in the FSOC's enabling statute and in the statutory Volcker Rule itself. Additionally, we strongly believe there is an oversight role for Congress to play in ensuring such coordination and the consistent application of the Rule applies, beginning with this hearing today. Considering the lack of a re-proposal, we also urge the regulators to be flexible and open to amending the Volcker Rule through an iterative process as problems arise going forward. We note that the Volcker statute requires that the regulators "consult and coordinate with each other, as appropriate" to assure that there is "consistent application and implementation" of the Volcker Rule.

In conclusion, I wish to stress again that there remain many outstanding questions as to how the Volcker Rule will be implemented and enforced and SIFMA and its members are still carefully reading the Rule to understand its consequences. There is a strong likelihood that significant issues may arise in the coming weeks or months that are simply not on our radar screen today—the

Volcker Rule is that complex. Failure to address this could result in more compliance burdens that would undermine activities beneficial to the economy such as market making and hedging. We look forward to working with Congress, our regulators, and other market participants to ensure the implementation of the Volcker Rule is not disruptive to the capital markets and the job creators they support. With that, I look forward to answering your questions.