



Invested in America

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Ladies and Gentlemen:

We are writing to advise the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Securities and Exchange Commission and the Commodity Futures Trading Commission (collectively, the "Agencies") of the intention of certain financial institutions that are members of the Securities Industry and Financial Markets Association ("SIFMA")¹ to utilize joint ventures, as defined in

¹ 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.

Section __.10(c)(3) ("Section __.10(c)(3)") of the "Volcker Rule"² regulations, to share the income, gain and loss on municipal bonds or other tax-exempt securities ("Bonds"). Participants in joint ventures of this kind ("Bond Joint Ventures") will always include a banking entity or one of its affiliates, and the Bonds will always be securities that a banking entity or its affiliates are permitted to hold under Section 13(d)(1)(A) of the Bank Holding Company Act of 1956, as amended (the "BHCA"). In most cases the other participants in Bond Joint Ventures are expected to be (i) money market funds that comply with Rule 2a-7 under the Investment Company Act of 1940 (the "1940 Act") and are registered as open-end investment companies under the 1940 Act and (ii) other investment companies (both closed-end and open-end funds) registered under the 1940 Act. The co-venturers in a Bond Joint Venture will share in income and gain and loss on the Bonds owned by the Bond Joint Venture in accordance with their respective risk/return profiles and the regulatory requirements to which they are subject.

With some exceptions discussed in this letter, the Bond Joint Ventures will replicate the substantive economic arrangements and business of current "tender option bond" structures, which generally issue the same kind of interests that are described in the attached term sheet (the "Term Sheet").³ Terms not otherwise defined in this letter are used as defined in the Term Sheet. The use of Bond Joint Ventures is expected to mitigate the significant disruption to the municipal securities markets and the economic burden imposed on municipalities (acknowledged by the Agencies in the Supplementary Information that accompanied the promulgation of the Volcker Rule) that could result if banking entities were effectively prohibited by the Volcker Rule from participating in all tender option bond structures.⁴

The Term Sheet describes the characteristics of the Bond Joint Ventures. We want to emphasize that this letter reflects the considered views of the various SIFMA member stakeholders in the municipal bond financing market. We greatly appreciate your consideration of Bond Joint Ventures and the views set forth in this letter, and we would welcome the opportunity to discuss Bond Joint Ventures further with you or with any member of the staff of any of the Agencies.

Our group members (including several major law firms) are of the considered view that Bond Joint Ventures will qualify as joint ventures as defined in Section __.10(c)(3) and as discussed in the Supplementary Information. The discussion below describes the reasoning that supports that conclusion.

² *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds*, 79 FR 5535 (the "Joint Release") and 79 FR 5808 (each dated January 31, 2014); codified as 12 CFR Parts 44 (Office of the Comptroller of the Currency), 248 (Board of Governors of the Federal Reserve System), 255 (Securities and Exchange Commission) and 351 (Federal Deposit Insurance Corporation) and 17 CFR Part 75 (Commodity Futures Trading Commission).

³ Current tender option bond structures are described in the text following note 2037 of the "Supplementary Information" contained in the Joint Release.

⁴ If Bond Joint Ventures did not qualify as joint ventures under the Volcker Rule, they probably would be "covered funds" because they would otherwise be entities that base their exemption from the status of "investment company" under the 1940 Act on one of the "private investment company" exemptions (i.e., Sections 3(c)(1) and 3(c)(7) of the 1940 Act).

Preliminarily, we note that although the Agencies decided, as explained in the Supplementary Information,⁵ not to provide an exclusion from the definition of "covered fund" under the Volcker Rule for tender option bond vehicles, the Agencies noted in their introduction to the Supplementary Information's discussion of various ungranted exclusion requests that, "[T]o the extent that one of [the unexcluded] entities qualifies for one or more of the other exclusions from the definition of covered fund, that entity would not be a covered fund under the final rule."⁶ To similar effect, the Agencies noted that the Volcker Rule does not contain a "specific" exemption for tender offer bond vehicles⁷ and that "a banking entity would need to evaluate *whether a tender option bond vehicle is a covered fund ... If a tender option bond vehicle is a covered fund and an exclusion from that definition is not available*, then banking entities sponsoring such a vehicle will be subject to the [relevant prohibitions]"⁸ For the reasons discussed below, we believe that a Bond Joint Venture fits within the definition of "joint venture" in the Volcker Rule and, therefore, is not a covered fund.⁹

Section __.10(c)(3) specifies that a joint venture meeting its requirements must be "between a banking entity or any of its affiliates and one or more unaffiliated persons" and comply with the following additional requirements:

⁵ Supplementary Information, part IV.B.1.d.4.

⁶ Supplementary Information, part IV.B.1.d.

⁷ Supplementary Information, text at note 2051 of the Joint Release.

⁸ Supplementary Information, text at note 2055 of the Joint Release (italics added).

⁹ While there is no settled legal definition of the term "joint venture," courts in the United States have developed the concept in the context of contractual arrangements, not otherwise formally organized, to carry out a business enterprise for profit, resembling (but not necessarily the same as) partnerships. Cases dealing with the subject generally focus on the issues of whether a joint venture was actually formed (including by oral agreement or course of conduct), the scope of the venture, the duties of the parties to each other and the authority of one party to bind the others. See, for example, *Sasportes v. M/V Sol de Copacabana*, 581 F. 2d 1204 at 1208 (5th Cir. 1978); Kelly E. Olson, *Joint Ventures – Essential Elements: the North Dakota Supreme Court Creates a Broader Definition of Joint Ventures*, *Sandvick v. LaCrosse*, 2008 ND 77, 747 N.W.2d 519, 85 N.D. L. REV. (2009); and Henry W. Nichols, *Joint Ventures*, 36 VA. L. REV. 425 (1950). We believe, however, that the Agencies clearly intended the term "joint venture" to include formally organized entities as well as contractual arrangements; for example, in the Supplementary Information, the Agencies several times use the word "entity" (as well as "arrangement") to describe joint ventures [Supplementary Information, text at note 1789 of the Joint Release]. See also "Joint Venture Proposals Pursuant to Regulation Y: Guidance Regarding Issues, and Criteria for Delegation," Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, SR 96-39 (APP) December 26, 1996 ("Joint ventures may be organized in any form, including a simple operating agreement signed by several participants, or a more formal partnership or corporate form. Joint ventures usually contain one or more of the following elements: (1) an agreement to carry on an enterprise; (2) a joint interest reflected in the contribution of property, finances, skill or knowledge of each party to the joint venture; (3) some measure of ownership or joint control of the enterprise; and (4) a provision for sharing profits and losses. Not all of these elements must be present before an entity is considered a joint venture, and no single element (such as equity ownership or a sharing of profits and losses) is determinative of joint venture status. However, the Reserve Banks should consult with Board staff where one or more of these elements are present and the proposed entity would not be treated as a joint venture.").

1. It must be comprised of no more than 10 unaffiliated co-venturers;¹⁰
2. It must be "in the business of engaging in activities that are permissible for the banking entity or affiliate, other than investing in securities for resale or other disposition"; and
3. It "is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities."

With regard to the basic requirement that a banking entity or one of its affiliates be a co-venturer, we note that, as described in the Term Sheet, banking entities will generally participate in Bond Joint Ventures as the "Liquidity Participant" and in certain Bond Joint Ventures as the "Residual Participant." Accordingly, a Bond Joint Venture will be a joint venture for purposes of the Volcker Rule regardless of whether a banking entity is the Residual Participant.

With regard to the first enumerated requirement, we note that, as stated in the Term Sheet, Bond Joint Venture participants will be restricted (unlike a traditional tender option bond structure) to no more than 10 unaffiliated co-venturers. The governing documents of Bond Joint Ventures will establish restrictions on the transfer of participating interests in a Bond Joint Venture so that the numerical limitation is respected.

With regard to the second enumerated requirement, we note that the Bonds in which a Bond Joint Venture will invest will be permissible investments for bank holding companies and their subsidiaries.¹¹ The purpose of a Bond Joint Venture will be to share the tax-exempt interest income on the Bonds in accordance with the risk, regulatory and investment profiles of the respective co-venturers.¹² In the case of Residual Participants, the primary value is the provision of financing; in the case of a Floating Investment Participant, a Bond Joint Venture will provide an investment opportunity. A Bond Joint Venture's purpose will not be to invest in Bonds for the purpose of resale or other disposition.¹³

¹⁰ Clarification of the meaning of "unaffiliated co-venturers" in the context of investment funds that have the same investment manager (which would be considered to be "affiliated" for purposes of the 1940 Act) would be appreciated.

¹¹ 12 CFR § 225.28(b)(1) and (b)(8)(i). Banking entities and their affiliates will not utilize their merchant banking authority to participate in Bond Joint Ventures; accordingly, Bond Joint Ventures will not fall afoul of the interpretation set forth in the Supplementary Information that a qualifying joint venture may not engage in merchant banking activities. [Supplementary Information, text preceding note 1790 of the Joint Release.]

We also note that the Office of the Comptroller of the Currency has determined that national banks are permitted to invest in residual interests, and provide liquidity for, traditional tender option bond vehicles. See, for example, OCC Interpretive Letter #1070 (September 6, 2006).

¹² We note that the Agencies decided, in response to numerous comments, not to require (as the Agencies initially proposed) that a qualifying joint venture be an "operating company." [Supplementary Information, text at notes 1777-1789 of the Joint Release.]

¹³ The right of the Residual Participants, and in certain circumstances the Floating Interest Participants and the Liquidity Participant, to cause the disposition of a Bond Joint Venture's Bonds (as described in the Term Sheet) does not indicate that the purpose of a Bond Joint Venture is to invest in Bonds for the purpose of resale or other disposition. On the contrary, that right is the same as the typical right of a joint venture participant to terminate all or

With regard to the third enumerated requirement, the primary purpose of a Bond Joint Venture will not be investment in securities for resale or other disposition or otherwise trading in securities. As noted above, the purpose of a Bond Joint Venture will be to provide a source of funding to the Residual Participants and an investment opportunity to the Floating Investment Participants.

We note again that we would welcome the opportunity to discuss Bond Joint Ventures further with you or with any member of the staff of the Agencies. We will be contacting you to discuss. Please contact either David Cohen (212-313-1265; dcohen@sifma.org) or Matt Nevins (212-313-1176; mnevins@sifma.org) of SIFMA or John Lutz (212-547-5605; jlutz@mwe.com) or Edwin (Ted) Laursen (212-547-5657; elaursen@mwe.com) of the law firm of McDermott Will & Emery LLP if you have any questions.

Very truly yours,



David L. Cohen
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Enclosure: Tax-Exempt Bond Joint Venture Term Sheet

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part of its participation in the joint venture under specified circumstances. In addition, as noted in the Term Sheet, if a circumstance arises in which a Bond Joint Venture is required to sell its Bonds, the Residual Participant will have a right (but not an obligation) to buy the Bonds, in which case the Bonds would be sold to a party that is an existing co-venturer in the Bond Joint Venture.

TAX-EXEMPT BOND JOINT VENTURES

This term sheet outlines the characteristics of joint ventures that will be entered into by a banking entity or one of its affiliates (the "Bank") and other venturers to fund the acquisition of municipal bonds or other tax-exempt securities ("Bonds").¹ Such joint ventures are intended to qualify as joint ventures for purposes of Section 10(c)(3) of the Volcker Rule regulations.

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| Objective; Joint Venture Assets | The joint venture will be formed to allow its co-venturers to participate in the ownership of Bonds and share the income, gain and loss on the Bonds, in accordance with their various risk/return profiles (generally, either short-term or long-term), in a manner that preserves the tax-exempt treatment of the interest on the Bonds. The Internal Revenue Service has concluded that joint ventures of this kind are treated as partnerships and not taxed at the joint venture level under the Internal Revenue Code. ² |
| Joint Venture Participants | The joint venture will be between (i) one or more " <u>Residual Participants</u> " (which may include the Bank) that contribute to the joint venture either one or more Bonds (in return for cash and an interest in the joint venture) or cash, (ii) one or more " <u>Floating Investment Participants</u> " that contribute cash to the joint venture and will receive floating rate distributions of a portion of the interest that is paid on the joint venture's Bonds and (iii) the Bank, which, acting in the capacity of the " <u>Liquidity Participant</u> ", will contribute the Liquidity Obligation to the joint venture (as defined below). |
| Form of Business Entity | The joint venture is expected to take the form of an entity that is treated as a partnership under the Internal Revenue Code, including a statutory or common law business trust or a limited liability company. If permitted by the source of law under which the joint venture is organized, a joint venture may be a separate series of a single organization (for instance, a separate series of a Delaware business trust or a Delaware limited liability company that is treated as a separate entity for state law purposes). |
| Management | Management of each joint venture will be vested in a party (the " <u>Responsible Party</u> ") appropriate for the form of entity chosen by the co-venturers (for example, the "trustor" of a business trust or the "managing member" of a limited liability company). The Responsible Party typically will be the relevant Residual Participant (or an agent acting on behalf of the relevant Residual Participant). Typically, the |

¹ The term "Bonds" includes custodial receipts representing municipal securities that are supported by a letter of credit or other form of enhancement in order to meet credit quality standards (such as those that apply to instruments held by money market funds).

² Rev. Proc. 2003-84, 2003-2 C.B. 1159; Notice 2008-80, 2008-2 C.B. 820.

Responsible Party will have certain control rights (including the appointment of certain service providers) and will be responsible for the selection of the Bonds and additional Bonds, if any (subject to the approval of the Floating Investment Participants and the Liquidity Participant), and the disposition of Bonds.

**Limit on
Number of co-
Venturers**

To comply with the Volcker Rule requirement that a joint venture be comprised of no more than 10 unaffiliated co-venturers, the joint venture documentation will establish restrictions on transfer, compliance with which will be monitored by the joint venture's service providers, designed to prevent that numerical limit from being breached. The service providers for the joint venture, acting in such capacity, will not be considered co-venturers.

**Floating
Investment
Participants**

Floating Investment Participants will make one-time capital contributions to the joint venture and receive "Floating Rate Interests" in the joint venture. Floating Investment Participants will have no obligation to contribute additional capital but may increase their capital contributions to acquire additional Floating Rate Interests issued in connection with the acquisition by the joint venture of additional Bonds and may acquire additional Floating Rate Interests that are made available by another Floating Investment Participant exercising a Floating Participant Exit Right (as described below). A Floating Rate Interest will confer a right to receive (i) a floating rate of distributions of Bond interest by the joint venture (or a fixed rate of distribution for a specified term) on the Floating Investment Participant's capital contribution, reset periodically (the "Floating Interest Return Rate"), subject to a maximum rate of return tied to the amount of tax-exempt interest to be received by the joint venture, and (ii) a portion of the capital gain, if any, realized by the joint venture upon disposition of the Bonds (the "Floating Interest Gain Share"). The Floating Investment Participants will also be the beneficiaries of the Liquidity Obligation (as defined below) that will be funded by the Liquidity Participant.

*Distribution
Rights*

Exit Right

Each Floating Investment Participant will have the right to exit the joint venture altogether or decrease its capital contribution in part by exercising a "Floating Participant Exit Right," which will be supported by the Liquidity Obligation (as defined below) and will be subject to termination upon the occurrence of an "Exit Right Termination Event" (defined, in very general terms, as (i) an act of bankruptcy by the issuer of the Bonds, (ii) a failure to pay principal of or interest on the Bonds, (iii) a specified downgrading of the Bonds or (iv) a determination that interest payments on the Bonds are taxable). If an Exit Right Termination Event occurs, the Bonds will be sold, with the proceeds allocated among the Floating Investment Participants, the Residual Participants and the Liquidity Participant pro rata in accordance with the stated value of their ownership interests in the joint venture (after the payment of joint venture expenses).

Redemption

In addition, each Floating Investment Participant will have the right, beginning on

Right the date upon which the Bonds have reached 80% of their average remaining life at the time of their acquisition by the joint venture, to cause the joint venture to sell a pro rata portion of the Bonds, redeem some or all of its Floating Rate Interests and receive in return its capital contributions and accrued distributions plus its portion of the Floating Interest Gain Share.³

Residual Participants The initial capital commitment of the Residual Participants will consist either of the contribution of the Bonds to the joint venture at the joint venture's commencement (in return for cash and a "Residual Interest" in the joint venture) or cash (in return for a Residual Interest in the joint venture). Residual Participants will have no obligation to contribute additional capital but may do so if the joint venture acquires additional Bonds or in connection with a decision by the Residual Participant (or the Liquidity Participant) to direct the joint venture to acquire Floating Rate Interests upon a Floating Investment Participant's exercise of its Floating Participant Exit Right (as described below under "Remarketing; Liquidity Participant Obligations: Remarketing").

Residual Participant Distribution Rights The Residual Participants will be entitled to receive (i) the balance of the joint venture's interest income on the Bonds after (a) the payments of distributions on the Floating Rate Interests, (b) distributions due to the Liquidity Participant as compensation for its Liquidity Obligation and (c) payment of the other expenses of the joint venture and (ii) the balance of any capital gain realized by the joint venture upon disposition of the Bonds after distribution of the Floating Interest Gain Share and payment of expenses of the joint venture.

Residual Participant Redemption Right Each Residual Participant will have the right (the "Residual Participant Redemption Right") to redeem some or all of its Residual Interest and a proportionate amount of outstanding Floating Rate Interests and receive either the proceeds of the sale of a commensurate principal amount of the Bonds or a distribution in kind of such Bonds. In connection with such a redemption by a Residual Participant, each redeemed Floating Investment Participant will receive for its redeemed Floating Rate Interest the amount of its related capital contribution plus accrued and undistributed distributions thereon (calculated using the Floating Interest Return Rate) ("Capital Plus the Required Distribution"), plus the applicable Floating Interest Gain Share (if any).

³ In some joint ventures a Floating Investment Participant's right to cause a pro rata sale of the Bonds will be exercisable only if the Bonds have appreciated in value. Also, in some joint ventures such a pro rata sale of the Bonds and distribution of accrued distributions and Gain Share may occur automatically (subject to a right on the part of a Floating Investment Participant to exercise an option to retain its Floating Rate Interests) when the Bonds reach 80% of their average remaining life at the time of their acquisition by the joint venture.

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| <i>Residual Participant Bond Purchase Rights</i> | If Bonds are required to be sold at any time pursuant to the terms of the joint venture agreement, each Residual Participant may have a right to purchase those Bonds at the price at which the Bonds would otherwise be sold. ⁴ |
| Remarketing; Liquidity Participant Obligations | If a Floating Investment Participant exercises its Floating Participant Exit Right, a " <u>Remarketing Agent</u> " (appointed by the Responsible Party) will attempt to remarket the offered Floating Rate Interests to other current, or new, Floating Investment Participants at a price equal to Capital Plus the Required Distribution, subject to the restrictions on the number of venturers described above. ⁵ The Remarketing Agent may (but will not be obligated to) purchase for its own account the unremarketed Floating Rate Interests of an exiting Floating Investment Participant at a price equal to Capital Plus the Required Distribution. If such Floating Rate Interests are not so acquired from the exiting Floating Investment Participant, the Liquidity Participant will provide liquidity for the benefit of the exiting Floating Investment Participants in one of the ways specified below (the " <u>Liquidity Obligation</u> "). |
| <i>Remarketing</i> | |
| <i>Mandatory Venture Triggering Events</i> | The Liquidity Obligation will also apply upon the occurrence of a "Mandatory Venture Triggering Event" specified in the joint venture agreement, typically including (but not necessarily limited to): (i) an expiration or termination of the Liquidity Obligation (including as a result of specified declines in the value or ratings of the Bonds); (ii) the calculation of the Floating Interest Return Rate is changed in certain ways without the consent of the Floating Investment Participants; (iii) a Residual Participant's exercise of its Residual Participant Redemption Right; (iv) the Liquidity Participant is subject to an "act of bankruptcy"; or (v) the joint venture is at risk of noncompliance with applicable securities laws or banking regulations or is subject to material tax liabilities. |
| <i>Nature of the Liquidity Obligation</i> | The Liquidity Obligation commitment will equal the aggregate amount of the outstanding Floating Rate Interests plus the maximum amount of distributions that could accrue thereon during the applicable accrual period, determined after giving effect to issuances or redemptions of Floating Rate Interests. The Liquidity Obligation may be in one of several forms, in each case applicable unless an Exit Right Termination Event has occurred, including (i) a "full liquidity" standby purchase obligation, pursuant to which the Liquidity Participant will purchase Floating Rate Interests at Capital Plus the Required Distribution, (ii) a "full liquidity" lending obligation, pursuant to which the Liquidity Participant will advance funds, as a loan to the joint venture, to be applied to the purchase by the |

⁴ This right may be subject to the consent of the Liquidity Participant and to the exercise by each other Residual Participant of an equivalent pro rata right.

⁵ In some joint ventures (i) the other Floating Investment Participants and/or the Residual Participants will have a right of first refusal to acquire the Floating Rate Interests offered by an exiting Floating Investment Participant at a price equal to Capital Plus the Required Distribution and/or (ii) the Residual Participants may contribute sufficient capital to the joint venture to permit the joint venture to acquire the offered Floating Rate Interests at a price equal to Capital Plus the Required Distribution.

joint venture of Floating Rate Interests at Capital Plus the Required Distribution (with the Floating Rate Interests so purchased to be pledged by the joint venture to the Liquidity Participant as security for the loan) and (iii) a "net liquidity" funding obligation, pursuant to which the Liquidity Participant will fund an amount equal to any "shortfall" (in relation to Capital Plus the Required Distribution) that results from the sale of the Bonds so that the Floating Investment Participants will receive Capital Plus the Required Distribution for their Floating Rate Interests.⁶ If the Liquidity Obligation is triggered and the Floating Investment Participants have received Capital Plus the Required Distribution for their Floating Rate Interests, the Liquidity Participant will generally have the right to require the sale of all or a portion of the Bonds by the joint venture, in which event the balance (if any) of the proceeds of such a sale after reimbursement of the Liquidity Participant and the payment of the joint venture's expenses will be paid to the Residual Participants.

Contribution of Obligations to Joint Venture To support the Liquidity Participant's standby purchase, lending or funding obligation, the Liquidity Participant may be required to contribute a standby purchase agreement, lending agreement, letter of credit or other liquidity facility to the joint venture.

Possible Residual Participant Obligation The Residual Participant may be obligated, outside the joint venture agreement, to reimburse the Liquidity Participant for losses incurred by the Liquidity Participant in honoring its Liquidity Obligation.

Payments to Liquidity Participant The Liquidity Participant will be entitled to receive distributions or fees from the joint venture in respect of its capital commitments and capital contributions.⁷

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⁶ Such an obligation to fund shortfalls may, but need not, be structured as a "deficit restoration obligation" to restore negative balances in the Liquidity Participant's capital account (for federal income tax purposes) that result from the allocation of shortfalls to the Liquidity Participant. In addition, the Residual Participant may act as the Liquidity Participant in a structure in which shortfalls are funded by a deficit restoration obligation on the part of the Residual Participant.

⁷ In some joint ventures in which the Bank is the Residual Participant, the liquidity provider may be a service provider and not a venturer, in which event the liquidity provider would receive a fee from the joint venture.