April 26, 2017

The Honorable Michael D. Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

We are writing in response to your release of March 20, 2017 to respectfully request that you consider a legislative proposal that would, if enacted, address what we believe is an unintended, costly consequence of the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act") for investors in hedge funds, bank maintained collective funds and other private funds ("covered funds"). As explained below, this unintended consequence will cost investors directly, as the cost of change is often paid out of the funds, and potentially adds confusion to their investment decisions, discouraging their participation. As many Americans work to save for their children's education and for their own retirement, we believe this legislative proposal merits your consideration.

As you know, Section 13 of the Bank Holding Company Act ("BHCA") was added by Section 619 of the Dodd Frank Act and is referred to as the Volcker Rule. The Volcker Rule's final implementing regulations placed significant restrictions on the ability of banks and investment managers owned by banks to sponsor covered funds. One such restriction was that a covered fund may not share the same name with a "banking entity" or a "subsidiary" of a banking entity. The intent of the statute was to prevent investor confusion about who ultimately bears the risk of loss associated with covered funds and to discourage banks from intervening to protect the banks' reputation if a fund experienced a problem, as this intervention could damage the bank and cause it to fail and draw on FDIC or taxpayer resources.

Unfortunately, the final Volcker Rule incorporated the Federal Reserve's expansive, non-statutory view of what constitutes "control", and therefore "banking entity" and "subsidiary" of a banking entity captures a broad range of entities within the Bank Holding Company Act ("BHCA") structure. As a result, the "naming prohibition" extends to separately incorporated investment advisers within the BHCA structure that manage funds, even if the investment adviser has a different name than the bank. This issue was identified in numerous comment letters on the proposal to implement the Volcker Rule, and solutions were proposed; however, the final rule did not resolve this issue. Firms affected by this prohibition have until July 21, 2017 to comply by renaming existing covered funds; therefore, hundreds of funds across the industry will need to undergo an unnecessary and costly name change, even though the funds' current name does not indicate any affiliation with a bank. Re-naming funds can be an expensive exercise, with the cost often borne by fund shareholders.

It is important to note that the Volcker Rule requires clear disclosure that the bank will not bail out investors, and the Volcker Rule strictly prohibits a bank from doing so in any event, irrespective of whether there is an incentive to do so. Therefore, the name sharing prohibition adds little value beyond what is already codified in other aspects of the Volcker Rule. In particular, the "naming prohibition" and required changes to fund names will likely confuse investors without providing any additional safeguards. Further, disclosure documents identify the name of the manager even if its name is not used in the fund name itself.

The Federal Reserve's legal staff advised affected fund managers that a permanent solution requires legislative action to amend the Volcker Rule. During the last Congress, HR 4096, "The Investor Clarity and Bank Parity Act", sponsored by Representatives Stivers (R-OH) and Capuano (D-MA) was approved by the House of Representatives (395-3) in April of 2016. (Please see enclosed copy of HR 4096.) HR 4096 would, enacted by this Congress, make limited, technical modifications to the Volcker Rule and would clarify the original intent of the statute, while protecting the core provisions of the Rule. HR 4096 has been carefully drafted to retain the prohibition on banking entities from using the name of the affiliated depository bank or bank holding company or the word "bank" as part of the names of covered funds they organize and offer, while permitting a separately branded investment adviser to share its name or a variation of its name with the funds it sponsors.

We respectfully request that you include this narrow, technical correction in the legislation you are drafting for the Senate's consideration during this Congress.

Thank you very much for consideration.

Sincerely,

BlackRock

Natixis Global Asset Management

TIAA

UBS O'Connor LLC

Enclosure: HR 4096, "The Investor Clarity and Bank Parity Act"

Shown Here:
Referred in Senate (04/27/2016)

114TH CONGRESS
2D SESSION

H. R. 4096

IN THE SENATE OF THE UNITED STATES
APRIL 27, 2016

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

To amend the Volcker Rule to permit certain investment advisers to share a similar name with a private equity fund, subject to certain restrictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Investor Clarity and Bank Parity Act".

SEC. 2. NAMING RESTRICTIONS.

Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) in subsection (d)(1)(G)(vi), by inserting before the semicolon the following: ", except that the hedge fund or private equity fund may share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity find, if—

"(I) such investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978;

"(II) such investment adviser does not share the same name or a variation of the same name as an insured depository institution, any company that controls an insured depository institution, or any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and

"(III) such name does not contain the word 'bank'

(2) in subsection (h)(5)(C), by inserting before the period the following: ", except as permitted under subsection (d)(1)(G)(vi)".

Passed the House of Representatives April 26, 2016.

Attest:

Karen L. Haas,
Clerk