

or individual industries; and any potential effect on competition, investment or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

D. SEC Economic Analysis

[SEC economic analysis to be inserted upon approval by the SEC.]

Text of the Proposed Common Rules

(All Agencies)

The text of the proposed common rules appear below:

Text of Common Rule

PART [__] PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

1. Part __ is amended by revising the table of contents as follows:

Subpart A Authority and Definitions

__1. Authority, purpose, scope, and relationship to other authorities [Reserved].

__2. Definitions.

Subpart B Proprietary Trading

__3. Prohibition on proprietary trading.

__4. Permitted underwriting and market making-related activities.

__5. Permitted risk-mitigating hedging activities.

__6. Other permitted proprietary trading activities.

__7. Limitations on permitted proprietary trading activities.

__8. [Reserved]

__9. [Reserved]

Subpart C Covered Fund Activities and Investments

__10. Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

__11. Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

__12. Permitted investment in a covered fund.

__13. Other permitted covered fund activities and investments.

__14. Limitations on relationships with a covered fund.

__15. Other limitations on permitted covered fund activities and investments.

___.16. Ownership of interests in and sponsorship of issuers of certain collateralized debt obligations backed by trust-preferred securities.

___.17. [Reserved]

___.18. [Reserved]

___.19. [Reserved]

Subpart D Compliance Program Requirement; Violations

___.20. Program for compliance; reporting.

___.21. Termination of activities or investments; penalties for violations.

Appendix Reporting and Recordkeeping Requirements for Covered Trading Activities

2. In subpart A, section ___.2 is revised as follows:

§ ___.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, or such other accounting standards applicable to a banking entity that the [Agency] determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity*. (1) Except as provided in paragraph (d)(2) of this section, *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 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative*. (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not

within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than \$1,000,000,000; and

(2) The [Agency] has not determined pursuant to § __.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities*.

(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds \$10,000,000,000; or

(ii) The [Agency] has determined pursuant to § __.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

3. In subpart B, section __.3 is amended by:

- a. Revising paragraph (b);
- b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);
- c. Adding a new paragraph (c);
- d. Revising paragraph (e)(3);
- e. Adding a new paragraph (e)(10);
- f. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14);
- g. Adding a new paragraph (f)(5); and
- h. Adding a new paragraph (g).

The revisions and additions read as follows:

§ __.3. Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account.* *Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed \$25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The [Agency] may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the [Agency] has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the \$25 million threshold in that paragraph at any point, the banking entity shall, in accordance with any policies and procedures adopted by the [Agency]:

(i) Promptly notify the [Agency];

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25))), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ __.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with [Agency]'s supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) *Cross-currency swap* means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority*: (1) The [Agency] may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) Notice and Response Procedures.

(i) Notice. When the [Agency] determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the [Agency] will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) Response.

(A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the [Agency] consider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated [Agency] official within 30 days after the date on which the banking entity received the notice. The [Agency] may shorten the time period when, in the opinion of the [Agency], the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the [Agency] may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the [Agency] shall constitute a waiver of any objections to the [Agency]'s determination.

(iii) After the close of banking entity's response period, the [Agency] will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the [Agency]'s determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

4. In subpart B, section __.4 is amended by:

- a. Revising paragraph (a)(2);
- b. Adding a new paragraph (a)(8);
- c. Revising paragraph (b)(2);
- d. Revising the introductory language of paragraph (b)(3)(i);
- e. In paragraph (b)(5) revising the references to "*inventory*" to read "*positions*"; and
- f. Adding a new paragraph (b)(6).

The revisions and additions read as follows:

§ __.4. Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii) (A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and (B) reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(1) Amount, types, and risk of its underwriting position;

(2) Level of exposures to relevant risk factors arising from its underwriting position; and

(3) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the [Agency] on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the [Agency] (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the [Agency].

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the [Agency] if the [Agency] determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The [Agency] will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or

counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in this paragraph (b) in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of \$50 billion or more as measured in accordance with the methodology described in definition of “significant trading assets and liabilities” contained in § __.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk’s market making-related activities, on the:

(1) Amount, types, and risks of its market-maker positions;

(2) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(3) Level of exposures to relevant risk factors arising from its financial exposure; and

(4) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the [Agency] on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the [Agency] (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s) , in each case in the form and manner as directed by the [Agency].

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the [Agency] if the [Agency] determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The [Agency] will provide notice of any such determination to the banking entity in writing.

5. In subpart B, section __.5 is amended by:
- a. Revising paragraph (b);
 - b. Revising the introductory language of paragraph (c)(1); and
 - c. Adding new paragraph (c)(4).

The revisions and additions read as follows:

§ __.5. Permitted risk-mitigating hedging activities.

* * * * *

(b) Requirements.

(1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(1) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(2) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(3) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

6. In subpart B, section __.6 is amended by:

- a. Revising paragraph (e)(3); and
- b. Removing paragraph (e)(6).

The revisions read as follows:

§ __.6. Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

7. In subpart C, section __.10 is amended by:

- a. In paragraph (c)(8)(i)(A) revising the reference to “§ __.2(s)” to read “§ __.2(u)”;

- b. Removing paragraph (d)(1);
- c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);
- d. In paragraph (d)(5)(i)(G) revising the reference to “(d)(6)(i)(A)” to read “(d)(5)(i)(A)”;
- e. In paragraph (d)(9) revising the reference to “(d)(9)” to read “(d)(8)” and the reference to “(d)(10)(i)(A)” to read “(d)(9)(i)(A)” and the reference to “(d)(10)(i)” to read “(d)(9)(i)”.

8. In subpart C, section __.11 is amended by revising paragraph (c) as follows:

§ __.11. Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) *Underwriting and market making in ownership interests of a covered fund.* The prohibition contained in § __.10(a) of this subpart does not apply to a banking entity’s underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § __.4(a) or § __.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78o-11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C.78o-11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § __.12(a)(2)(ii); § __.12(a)(2)(iii), and § __.12(d) of this subpart.

9. In subpart C, section __.12 is amended by:

- a. In paragraphs (c)(1) and (d) revising the references to “§ __.10(d)(6)(ii)” to read “§ __.10(d)(5)(ii)”;
- b. Removing paragraph (e)(2)(vii); and
- c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

10. In subpart C, section __.13 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraph (b)(3); and
- c. Removing paragraph (b)(4)(iv).

The revisions read as follows:

§ __.13. Other permitted covered fund activities and investments.

(a) *Permitted risk-mitigating hedging activities.* (1) The prohibition contained in § __.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) *Requirements.* The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising (1) out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund or (2) in connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such

compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

* * * * *

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

11. In subpart C, section __.14 is amended by revising paragraph (a)(2)(ii)(B) as follows:

§ __.14. Limitations on relationships with a covered fund.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the [Agency] (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

12. In subpart D, section __.20 is amended by:

- a. Revising paragraph (a);
- b. Revising the introductory language of paragraph (b);
- c. Revising paragraph (c);
- d. Revising paragraph (d);
- e. Revising the introductory language of paragraph (e);
- f. Revising paragraph (f)(2); and

- g. Adding new paragraphs (g) and (h).

The revisions read as follows:

§ __.20. Program for compliance; reporting.

* * * * *

(a) *Program requirement.* Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) *Banking entities with significant trading assets and liabilities.* With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.*

(1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the [Agency], each year no later than March 31, that the banking entity has in place processes reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The [Agency] notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1).

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The [Agency] notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) Frequency of reporting: Unless the [Agency] notifies the banking entity in writing that it must report on a different basis, a banking entity with \$50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of “significant trading assets and liabilities” contained in § __.2 of this part of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the [Agency] notifies the banking entity in writing that it must report on a different basis.

(e) *Additional documentation for covered funds.* A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) *Banking entities with moderate trading assets and liabilities.* A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) *Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.*

(1) *Rebuttable presumption.* Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.*

(i) If upon examination or audit, the [Agency] determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C, the [Agency] may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures.

(A) Notice. The [Agency] will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) Response.

(I) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the [Agency] consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated [Agency] official within 30 days after the date on which the banking entity received the notice. The [Agency] may shorten the time period when, in the opinion of the [Agency], the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the [Agency] may extend the time period for good cause.

(II) Failure to respond within 30 days or such other time period as may be specified by the [Agency] shall constitute a waiver of any objections to the [Agency]'s determination.

(C) After the close of banking entity's response period, the [Agency] will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the [Agency]'s determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) *Reservation of authority.* Notwithstanding any other provision of this part, the [Agency] retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the [Agency] determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

13. Part __ is amended by:

- a. Removing Appendix A and Appendix B; and
- b. Adding new Appendix.

The new Appendix read as follows:

Appendix to Part __—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (“proprietary trading restrictions”). Pursuant to § __.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and

liabilities. These entities are required to (i) furnish periodic reports to the [Agency] regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § __.20.

b. The purpose of this appendix is to assist banking entities and the [Agency] in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § __.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ __.4, __.5, or __.6(a)-(b) (i.e., underwriting and market making-related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the [Agency] of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is *not* intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § __.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (e.g., whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk

tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ __.4 through __.6(a)-(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the [Agency], and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ __.2 and __.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ __.4, __.5, __.6(a), or __.6(b). A banking entity may include in its covered trading activity trading conducted under §§ __.3(e), __.6(c), __.6(d), or __.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § __.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the

banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

- Risk and Position Limits and Usage;
- Risk Factor Sensitivities;
- Value-at-Risk and Stressed Value-at-Risk;
- Comprehensive Profit and Loss Attribution;
- Positions;
- Transaction Volumes; and
- Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § __.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities.

3. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § __.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § __.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § __.20 must provide file identifying information in each submission to the [Agency] pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. *Trading Desk Information*

Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

- Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;
- Identification of each type of covered trading activity in which the trading desk is engaged;
- Brief description of the general strategy of the trading desk;
- A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § __.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its

quantitative measurements products excluded from the definition of “financial instrument” under § __.3(d)(2) and, if so, identify such products;

- Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;
- For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:
 - National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;
 - State nonmember bank, foreign bank having an insured branch, State savings association;
 - U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-registered major security-based swap participant;
 - Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;
 - State member bank;
 - Bank holding company, savings and loan holding company;
 - Foreign banking organization as defined in 12 CFR 211.21(o);
 - Uninsured State-licensed branch or agency of a foreign bank; or
 - Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;
- Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and
- Currency reported and daily currency conversion rate.

c. *Quantitative Measurements Identifying Information*

Each banking entity must provide the following information regarding the quantitative measurements:

- A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique

identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

- A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;
- A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;
- A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and
- A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. *Narrative Statement*

Each banking entity made subject to this appendix by § __.20 must submit in a separate electronic document a Narrative Statement to the [Agency] describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used.

If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. *Frequency and Method of Required Calculation and Reporting*

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the [Agency] on the reporting schedule established in § __.20 unless otherwise requested by the [Agency]. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable

quantitative measurement to the [Agency] in accordance with the XML Schema specified and published on the [Agency]'s website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the [Agency] pursuant to this appendix and § __.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the [Agency] to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the [Agency].

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § __.4 and § __.5. A number of the metrics that are described below, including "Risk Factor Sensitivities" and "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 activities under § __.4(b) and hedging activity under § __.5. Accordingly, the limits required under § __.4(b)(2)(iii) and § __.5(b)(1)(i)(A) must meet the applicable requirements under § __.4(b)(2)(iii) and § __.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the "Risk Factor Sensitivities" and "Value-at-Risk" metrics except to the extent any of the "Risk Factor Sensitivities" or "Value-at-Risk" metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: the unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability*: All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description*: For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: the unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period*: One trading day.

iii. *Measurement Frequency*: Daily.

iv. *Applicability*: All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description*: For purposes of this appendix, Value-at-Risk ("VaR") is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed Value-at-Risk ("Stressed VaR") is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period*: One trading day.

iii. *Measurement Frequency*: Daily.

iv. *Applicability*: For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of "financial instrument" under § __.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day ("existing positions"); (ii) profit and loss attributable to new positions resulting from the current day's trading activity ("new positions"); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day.

The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: the unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. *Positions, Transaction Volumes, and Securities Inventory Aging Measurements*

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for “securities” those securities that are also “derivatives,” as those terms are defined under subpart A; instead, report those securities that are also derivatives as “derivatives.”²⁸³ A banking entity must separately report the trading desk’s market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § __.4(a) or § __.4(b) to conduct underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for “securities” those securities that are also “derivatives,” as those terms are defined under subpart A; instead, report those securities that are also derivatives as “derivatives.”²⁸⁴ Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § __.4(a) to conduct underwriting activity is a market participant identified in § __.4(a)(7), and a customer of a trading desk that relies on § __.4(b) to conduct market making-related activity is a market participant identified in § __.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

²⁸³ See §§ __.2(i), (bb). For example, under this part, a security-based swap is both a “security” and a “derivative.” For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

²⁸⁴ See §§ __.2(i), (bb).

iv. *Applicability*: All trading desks that rely on § __.4(a) or § __.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description*: For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk’s securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk’s securities positions for the following periods: 0-30 calendar days; 31-60 calendar days; 61-90 calendar days; 91-180 calendar days; 181-360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also “derivatives,” as those terms are defined under subpart A.²⁸⁵

ii. *Calculation Period*: One trading day.

iii. *Measurement Frequency*: Daily.

iv. *Applicability*: All trading desks that rely on § __.4(a) or § __.4(b) to conduct underwriting activity or market-making related activity, respectively.

End of Common Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I 12 CFR Part 44

List of Subjects

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

²⁸⁵ See §§ __.2(i), (bb).