



**Community Development  
Venture Capital Alliance**

*Private equity for the public  
good.*

September 21, 2017

Legislative and Regulatory Activities Division  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW., Suite 3E-218  
Washington, D.C. 20219

Re: Proprietary Trading and Certain Interest in and Relationships with Covered Funds  
(Volcker Rule); Request for Public Input (Docket ID OCC-2017-0014)

Dear Sirs and Madams:

The Community Development Venture Capital Alliance<sup>1</sup> (“CDVCA”) appreciates this opportunity to comment on the implementing regulations under Section 13 of the Bank Holding Company Act, commonly known as the Volcker Rule (“Implementing Regulations”).<sup>2</sup>

Our main concern arises out of the Implementing Regulations’ treatment of the “public welfare” exemption to the Volcker Rule’s prohibitions. This is of interest to us because CDVCA’s membership, composed of community development venture capital funds (“CDVC Funds”) organized across the United States and globally, often seeks to raise capital from banking entities subject to the Volcker Rule. Thus, the ability of banking entities to avail themselves of the public welfare exemption to invest in CDVC Funds is a critical issue for our members. To this end, we believe the Implementing Regulations should be revised to make clear that CDVC Funds benefit from the public welfare exemption and are not subject to the Volcker

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<sup>1</sup> The CDVCA is the network for the field of community development venture capital (“CDVC”) investing. CDVC funds provide equity capital to businesses in underinvested markets, seeking market-rate financial returns, as well as the creation of good jobs, wealth, and entrepreneurial capacity. CDVCA is working on many fronts to build and strengthen the CDVC field. It promotes the field by combining advocacy, education, communications, and best-practice dissemination.

<sup>2</sup> For purposes of this letter, we cite to the common sections of the Implementing Regulations as adopted by the five implementing agencies (the “Agencies”), which are the Federal Reserve Board (“FRB”), Commodity Futures Trading Commission (“CFTC”), Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”), and Securities and Exchange Commission. The Implementing Regulations are codified at: 12 CFR part 44 (OCC); 12 CFR part 248 (FRB); 12 CFR part 351 (FDIC); 17 CFR part 75 (CFTC); and 17 CFR part 255 (SEC).

Rule’s covered funds prohibition. Below, we briefly provide background on this issue and discuss our proposed solution.

The Volcker Rule applies to “banking entities,” a term which includes an insured depository institution, a foreign bank with a U.S. banking presence (such as a branch office) and all affiliates of such entities. The Volcker Rule prohibits a banking entity from acquiring or retaining an ownership interest in or sponsoring a “covered fund.”<sup>3</sup> The definition of “covered fund” includes, among others, an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (the “1940 Act”), but for section 3(c)(1) or 3(c)(7) of the 1940 Act.<sup>4</sup> Privately offered funds, such as private equity, hedge and venture capital funds, often rely on those exemptions and, therefore, fall within the covered fund definition. Our member CDVC Funds often fit into this category.

The Implementing Regulations, however, exempt certain “public welfare” issuers from the definition of “covered fund.” Specifically, this exemption covers issuers (1) that qualify as small business investment companies (or “SBICs”), as defined in section 103(3) of the Small Business Investment Act of 1958, or (2) the business of which is to make investments that are designed primarily to promote the public welfare.<sup>5</sup> The latter category appears to be a “catch-all” prong, which the Implementing Regulations do not describe in detail. However, in explaining the public welfare exemption, the Agencies noted that the exemption is intended to allow banking entities to make investments, including in funds, to achieve Community Reinvestment Act (“CRA”) goals.<sup>6</sup>

Subsequent to the adoption of the Implementing Regulations, the OCC, FRB and FDIC stated in regulatory guidance that “community development venture capital companies that promote economic development by financing small businesses” are examples of “qualified investments” for the purpose of meeting CRA obligations.<sup>7</sup> Prior to this guidance, we felt investments by banking entities in our member CDVC Funds qualified for the exemption. The subsequent guidance, however, reinforced and made abundantly clear our view that investments in CDVC Funds qualify for the exemption. Although this issue is clear to us and many of our banking entity partners, it is not as clear to all our member CDVC Funds nor is it clear among all banking entities with which our members partner. Thus, in light of the subsequent guidance, we think this is an ideal opportunity to provide clarity on an issue of importance to our members by

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<sup>3</sup> Implementing Regulations §\_\_.10(a)(1).

<sup>4</sup> Id. at §\_\_.10(b)(1)(i).

<sup>5</sup> Id. at §\_\_.10(c)(11).

<sup>6</sup> 79 Fed. Reg. 5536, 5698 (Jan. 31, 2014) (describing the exemption as permitting investments in funds designed to promote public welfare and that play a role “in the ability of banking entities, especially community and regional banks, to achieve their financial and Community Reinvestment Act (“CRA”) goals”).

<sup>7</sup> 81 Fed. Reg. 48506, 48532 (July 25, 2016). A “qualified investment” is defined under the banking agencies’ CRA regulations as a “lawful investment, deposit, membership share, or grant that has as its primary purpose community development.” See, e.g., 12 CFR 228.12(t).

revising the Implementing Regulations to clarify that CDVC Funds qualify for the public welfare exemption.

We suggest providing clarity by explicitly including investments in CDVC Funds (that are also CRA-qualifying investments), under the public welfare exemption.<sup>8</sup> This approach would accomplish two objectives: (1) furthering the Agencies' original intent for the exemption to facilitate banking entities' CRA investments; and (2) providing CDVC Funds and banking entities greater clarity and certainty.

- *First*, including CRA-qualifying investments under the public welfare exemption would be consistent with and further the Agencies' original intent. As noted above, the preamble to the Implementing Regulations notes that investments relying on this exemption are intended to help banking entities, especially community and regional banks, meet their CRA goals. Explicitly incorporating investments in CDVC Funds that are also CRA-qualifying investments into the "public welfare" exemption, therefore, is entirely consistent with and facilitates the furtherance of the Agencies' intent.<sup>9</sup>
- *Second*, and perhaps most fundamental, this addition helps support community development efforts, precisely what the "public welfare" exemption was designed to promote.<sup>10</sup> Our members report reluctance by banking entities, especially community and regional banks, in investing in CDVC Funds because of a lack of certainty as to whether the funds are "covered funds" subject to the Volcker Rule's prohibitions. That certainty seems to be the only missing ingredient here. Banking entities want to support community development activities and, in this case, have the added incentive of using these investment activities to satisfy CRA requirements. Our member CDVC Funds want to partner with and seek investments from banks, which are an important source of capital and have a vested interest in the local communities that they serve. The ambiguity and lack of precision in the Implementing Regulations ultimately deters innovative and effective ways to support small businesses and low- and moderate-income communities from being developed and tested. The Implementing Regulations should support such activities.

In sum, we think the addition we request provides a workable solution and furthers the purpose of the "public welfare" exemption, without incentivizing any undue risk-taking or imposing any additional burdens on the OCC or other Agencies.

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<sup>8</sup> We propose that the Agencies explicitly add a category of entities to the public welfare exemption as follows: an issuer "that is a community development venture capital fund or other fund in which an investment by a banking entity would be treated as a qualified investment under the Community Reinvestment Act."

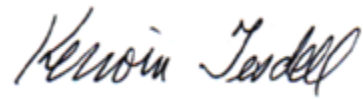
<sup>9</sup> A "qualified investment" is defined under the banking agencies' CRA regulations as a "lawful investment, deposit, membership share, or grant that has as its primary purpose community development." *See, e.g.*, 12 CFR 228.12(t).

<sup>10</sup> 79 Fed. Reg. at 5698 ("The Agencies believe that permitting a banking entity to sponsor and invest in these types of public interest entities will result in banking entities being able to provide valuable expertise and services to these entities and to provide funding and assistance to small businesses and low- and moderate-income communities.").

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We appreciate this opportunity to share our suggested improvements to the Implementing Regulations. If you have any questions regarding our comments or would like additional information, please feel free to contact me at [ktesdell@cdvca.org](mailto:ktesdell@cdvca.org). Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Kerwin Tesdell". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Kerwin Tesdell  
President  
Community Development Venture Capital Alliance

