Testimony of Jeffrey Plunkett
On behalf of
Natixis Global Asset Management
Before the Capital Markets and Government Sponsored Enterprises Subcommittee of the House Committee on Financial Services
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Chairman Garrett, Ranking Member Maloney, Members of the Subcommittee, thank you for inviting me to testify today on behalf of Natixis Global Asset Management. My name is Jeffrey Plunkett, and I am the Global General Counsel and Executive Vice President for Natixis Global Asset Management. Natixis Global Asset Management is a wholly owned subsidiary of Natixis, a French bank that is the corporate, investment and financial services arm of Groupe BPCE, the second largest banking organization in France. Natixis operates a single branch office in New York and does not accept FDIC-insured deposits. BPCE, Natixis and each of their affiliates, including Natixis Global Asset Management and each investment manager affiliated with us, is considered to be a "banking entity" for purposes of the Volcker Rule's restrictions.

Asset managers play an important role in the global financial system, investing client funds in stocks, bonds, commodities and currencies. Through their clients' funds, they provide an important source of capital formation and liquidity to markets worldwide. They enhance the flow of capital from savers and investors, and increase the set of opportunities to individuals and businesses. They serve the interests of individual investors through public and private retirement plans, foundations, and registered investment companies, by managing ERISA pension, 401(k), mutual fund and personal investments. Innovative asset managers provide new products that help individuals save for retirement. Asset managers affiliated with banks also contribute a source of revenues that is not dependent on capital of the parent bank.

Natixis Global Asset Management brings together the expertise of multiple specialized investment managers based in Europe, the Americas and Asia to offer a wide spectrum of equity, fixed-income and alternative investment strategies. The firm ranks among the world's largest asset managers. Headquartered in Paris and Boston, Natixis Global Asset Management's assets under management totaled $870 billion as of December 31, 2015.

Natixis Global Asset Management's affiliated investment management firms (each, an "NGAM Adviser") and distribution and service groups include: Active Investment Advisors; AEW Capital Management; AEW Europe; AlphaSimplex Group; Aurora Investment Management; Axeltis; Darius Capital Partners; DNCA Investments; Dorval Finance; Emerise; Gateway Investment Advisers; H2O Asset Management; Harris Associates; IDFC Asset Management Company; Loomis, Sayles & Company; Managed Portfolio Advisors; McDonnell Investment Management; Mirova; Natixis Asset Management; Ossiam; Seeyond; Vaughan Nelson Investment Management; Vega Investment Managers; and Natixis Global Asset Management Private Equity, which includes Seventure Partners, Naxicap Partners, Alliance Entreprendre, Euro Private Equity, Caspian Private Equity and Eagle Asia Partners.

The Volcker Rule "Name-Sharing Prohibition"

Section 13 of the Bank Holding Company Act ("BHCA") was added by Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), and is commonly referred to as the Volcker Rule. The Volcker Rule, and the Volcker Rule's final implementing regulations (the "Final Rule") contain, among other things, significant restrictions on the ability of banks, and investment managers affiliated with banks, to sponsor hedge funds and private equity funds. Notwithstanding the Volcker Rule's general prohibitions, Section 13(d)(1)(G) of the BHCA authorizes a banking entity to organize and offer a private equity or hedge fund, including sponsoring the fund, subject to compliance with certain conditions. One of those conditions is found at Section 13 (d)(1)(G)(vi), which provides that the banking entity may not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the name. The Final Rule expands upon this prohibition, stating that a covered fund (the Final Rule's term for hedge funds and private equity funds) may not share the same name or a variation of the same name with the banking entity (or an affiliate or subsidiary thereof) and also may not use the word ''bank'' in the name.

Unfortunately, this provision of the Final Rule is at odds with both industry practice and with the goal of providing clarity to investors about who is managing a covered fund. In our experience, most private funds (hedge funds and private equity funds) contain the name or a variation on the name of the investment management firm that advises the private fund. Thus, a fund managed by "ABC Investment Manager" might be called the "ABC Private Fund," which clearly distinguishes this private fund from other funds managed by other investment advisers.

This industry practice has been in place for many years, and serves the dual purpose of providing clarity to investors about who is managing the investor's money, as well as establishing brand equity for the investment adviser. In our experience, investors in private funds prefer to see the name of the fund manager in the name of the fund, which facilitates their investment review and provides clarity in reporting and tracking by the investor. It is worth noting that investors in private funds are typically sophisticated institutional investors, such as pension funds and endowments that are seeking to diversify their investments and manage risk, and are in all events required by law to be at least "accredited investors" meeting the financial and sophistication standards set by the U.S. Securities and Exchange Commission ("SEC").

As bank-affiliated investment managers are deemed "banking entities" subject to the Volcker Rule, NGAM Advisers and other bank-affiliated asset managers are now generally prohibited from using their name to help identify their private funds marketed in the U.S. This provision of the Final Rule puts them at odds with investors' desire for clarity – and at a competitive disadvantage with independent managers.

The situation is even more illogical when the bank-affiliated investment managers are branded separately from their parent bank or bank holding company. This is often the case when a bank

affiliate acquires previously established investment management firms, and maintains the name of the acquired firm under which it has previously operated. There are a number of other bank-affiliated investment management firms that operate in this manner. In the case of Natixis Global Asset Management, each of the NGAM Advisers operates under its own historical name and branding and, with only a couple of exceptions, none has Natixis or BPCE (or a variant) as part of its name or logo. Each NGAM Adviser is also separately registered with and regulated by the SEC and/or other regulatory agencies as required by its business.

We believe that compliance with the name-sharing prohibition of the Volcker Rule as currently in force risks confusion among investors and burdens firms that are affiliated with banks, leading to a lack of transparency for clients and a potential competitive disadvantage for bank-affiliated firms vis-à-vis their independent competitors.

Investor Clarity

The primary purpose of the name-sharing prohibition is to prevent investor confusion about who ultimately bears the risk of loss associated with investments in banking entity-sponsored hedge funds and private equity funds, and thereby limit the risk that investors will look to the affiliated bank to step in to protect investors. In this respect, the prohibition is very similar in concept to the limitations that bank and securities regulators historically imposed on the names of mutual funds advised by banks or bank affiliates. Significantly, however, those limitations were long ago removed as unnecessary and replaced with enhanced disclosures, even though the risk of investor confusion is much greater with retail investors than would be the case with investors in hedge and private equity funds, who under the securities laws must have a greater level of sophistication in order to invest in such funds.

Moreover, a number of Section 13(d)(1)(G)'s other conditions also address the risk for investor confusion about who ultimately bears the risk of loss associated with investments in such funds. Specifically, Section 13(d)(1)(G)(v) provides that the banking entity may not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests. In addition, Section 13(d)(1)(G)(viii) requires that the banking entity disclose to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by the investors in the fund and not by the banking entity. The Final Rule also expands these required investor disclosures to provide, among other things, (i) that investors should read the fund offering documents before investing in the fund and (ii) that "ownership interests in the covered fund are not insured by the FDIC, and are not deposits, obligations of, or endorsed or guaranteed in any way, by any banking entity".

These restrictions are more than sufficient to ensure that hedge funds and private equity funds sponsored by a banking entity are understood by investors to be separate from their sponsor and the affiliated bank or bank holding company. However, even in situations where the investment manager is branded totally separately from its affiliated bank (i.e., there is nothing in the name of the investment manager that is linked to the name of its affiliated bank), the literal language of Section 13(d)(1)(G)(vi) acts to prohibit the investment manager from

including its name as part of the name of the fund that it sponsors. As many private funds are logically named to include a reference to the investment manager that manages the investments, the "naming prohibition" contained in Section 13(d)(1)(G)(vi) simply serves to confuse investors and undermine effective marketing of investment products by bank-affiliated investment managers without providing any increased safeguards to investors or the affiliated bank.

Legislative Action is Necessary

H.R. 4096, "The Investor Clarity and Bank Parity Act" would, if adopted, make limited modifications to the Volcker Rule. It is a proposed technical amendment that would seek to clarify, and narrow to its apparent original intent, the scope of the Volcker Rule's overly broad name-sharing prohibition.

The name-sharing prohibition contained in the Volcker Rule was one of the most heavily commented upon aspects of the Volcker Rule. However, the regulatory agencies responsible for implementing the Volcker Rule determined that the "name-sharing restriction is imposed by statute" [1] and adopted that portion of the Final Rule as proposed. While the Final Rule did narrow the definition of covered funds, and thus the number of funds potentially subject to the name-sharing prohibition, it did not limit the name-sharing prohibition as many commenters had requested.

Natixis Global Asset Management has approached staff members of both the SEC and the Board of Governors of the Federal Reserve System ("FRB") regarding the application of the naming restrictions in the Volcker Rule to the NGAM Advisers. In our discussions, staff at both the SEC and the FRB have indicated that they appreciated our belief that the Volcker Rule – an expansive effort to regulate and protect the banking system after the financial crisis – was not intended to affect the naming of funds where the investment manager's name did not link the manager or the fund to its parent bank.

In November 2014, Natixis Global Asset Management also submitted a formal request for regulatory guidance on this issue to confirm our understanding. However, staff at both the SEC and the FRB expressed their belief that the language of the Volcker Rule legislation did not leave room for regulatory interpretation and that we would need legislative action to obtain relief from the strict naming restrictions in the Volcker Rule.

We question the necessity for any naming prohibition beyond prohibiting the use of the name of the affiliated bank or bank holding company or the word "bank" when a prohibition on bailing out hedge funds and private equity funds is in place and where there is disclosure that investors bear the risk of loss from their investments in such funds in any event. The prohibition on bailing out funds protects against the "too big to fail" problems of the financial crisis and the disclosure requirements provide the necessary warning to investors of the risks involved.

[1] See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5536 at 5717-18 (Jan. 31, 2014).

Economic Impact of Regulation

Natixis Global Asset Management supports common-sense regulation and believes steps were necessary following the financial collapse to prevent another from occurring. However, we believe in smart targeted regulation rather than overly broad regulation that can have unintended consequences that create unnecessary risk and harm both the markets and investors.

The recent global financial crisis was both a credit crisis and a liquidity crisis. Much of the financial regulation written in the wake of the crisis was designed to mitigate credit risk. While the regulation has worked to mitigate some of the credit risk that led to the crisis, it has had the unintended consequence of increasing liquidity risk (reducing liquidity). Legislation and rulemaking like Dodd-Frank and Basel III have improved the credit standing of banks and other lending/depository institutions. However, these rules have caused banks to pull back or eliminate market-making and other intermediary functions. Bank "desks" no longer stand between buyers and sellers, a risk, liquidity, and volatility mitigation function banks provided for years. By increasing capital and restricting market activities, Dodd-Frank and Basel III have had the unintended consequence of increasing liquidity risk as credit risk has been reduced.

The emphasis of Dodd-Frank and Basel III on reducing credit risk has also caused a squeeze on the creation of credit, which has harmed economic growth. Credit growth is the life-blood of economic growth, especially in periods where population growth, wage growth, and productivity growth are all either sub-par or non-existent. When banks are forced to increase equity and improve balance sheets, the easiest first step for banks to achieve this is to reduce lending. Loans that are not made cannot default. As a result, too much emphasis placed on balance sheet quality will impair credit creation and, by extension, economic growth. The lack of credit growth currently in the market is one of the main reasons why our recovery has been slower than hoped and our wage growth and employment continue to lag.

Conclusion

H.R. 4096 is a technical amendment that has been carefully crafted to protect the core values of the Volcker Rule and amend this provision of the Volcker Rule in a very limited way. It has been narrowly tailored to retain the prohibition on banking entities from using the name of the affiliated depository bank or bank holding company or the word "bank" as part of the names of hedge funds or private equity funds they organize and offer, while permitting a *separately branded* investment adviser to share its name or a variation of its name with the funds it sponsors. As currently drafted, the naming prohibition deprives investors of clarity and burdens the industry without providing increased safeguards to investors.

Mr. Chairman, we urge Congress to adopt H.R. 4096.

Thank you for the invitation to participate in today's hearing.