Testimony of

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"Examining the Impact of the Volcker Rule on Markets, Businesses, Investors and Job Creation"

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Chairman Capito, Chairman Garrett, Ranking Member Maloney, Ranking Member Waters, and members of the subcommittees: good morning. My name is Mark Standish. I serve as President and Co-CEO of RBC Capital Markets. I also am a member of the Group Executive, the executive management body responsible for the global operations of Royal Bank of Canada ("RBC"). As Co-CEO of RBC Capital Markets, I share responsibility for the management of the global Corporate and Investment Banking operations of RBC, with specific emphasis on capital markets activities, including financing and balance sheet management. I joined RBC in 1995,

preceded by years of business leadership at other financial institutions. In all, I have nearly 35 years of experience working in the capital markets.

Today, I am pleased to be here to testify on behalf of the Institute of International Bankers ("IIB") regarding the implementation of Section 619 of the Dodd-Frank Act (the "Volcker Rule"). The regulations proposed by the Federal banking agencies, the Securities and Exchange Commission and, just last week, by the Commodity Futures Trading Commission ("the Agencies") to implement the Volcker Rule have raised significant concerns for the IIB's members, which are comprised of internationally-headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of foreign banks that operate branches and agencies, bank subsidiaries and broker-dealer subsidiaries in the United States. In the aggregate, our members' U.S. operations have approximately $5 trillion in assets and provide 25% of all commercial and industrial bank loans made in this country and contribute to the depth and liquidity of U.S. financial markets. Our members also contribute more than $50 billion each year to the economies of major cities across the country in the form of employee compensation, tax payments to local, state and federal authorities, as well as other operating and capital expenditures.

Let me establish at the outset: the IIB supports the goals of financial reform – namely, increased transparency; stronger capital and liquidity standards; and reduced risk to financial stability and to the taxpayer. It is also important to make clear that, as with U.S. domestic banks, the U.S. risk-taking operations of international banks are subject to the statutory limitations set forth in the Volcker Rule. While IIB member firms generally share many of the concerns expressed by others regarding the Volcker Rule's impact on their operations, in my

testimony today I will focus on the significant cross-border and extraterritorial effects of the proposed regulations on the head offices and other non-U.S. operations of our member firms.

We have three major concerns:

- First, the proposed limitations on proprietary trading and fund activities conducted "solely outside of the United States" will have severe extraterritorial consequences that were not intended by Congress and are not justified by the policy behind the Volcker Rule;
- Second, the proposed regulations should provide an exemption for trading in foreign government securities comparable to the exemption for U.S. government securities to avoid unintended adverse effects on foreign government bond markets; and,
- Third, the imposition of the proposed complex compliance regime and reporting requirements on the non-U.S. operations of international banks will cause unprecedented extraterritorial interference with those operations and conflict with the regulatory regimes of their home countries.

While the IIB acknowledges the hard work of the Agencies and the challenges faced in developing the proposed rule, we strongly disagree with a number of key aspects of the proposal where we think the Agencies' interpretation is inconsistent with:

- the plain language of the statute;
- Congressional intent;
- the policy objectives of the Volcker Rule; and,
- longstanding U.S. policies limiting the extraterritorial scope of U.S. laws.

In our view, the current proposal to implement the Volcker Rule will not advance our shared goals. It may, instead, work to undermine them and ultimately adversely affect U.S. capital markets and economic growth.

Conduct Permitted "Solely Outside of the United States"

Congress amended earlier drafts of the Volcker Rule to make clear that proprietary trading and investment in, and sponsorship of, private equity and hedge funds conducted "solely outside of the United States" by international banks should not be subject to the Volcker Rule's prohibitions. Congress recognized the need to limit the extraterritorial reach of the Volcker Rule and to provide appropriate deference to the laws of other countries. As explained by one of the principal co-sponsors of the Volcker Rule, these exclusions are intended to "recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States, to engage in activities permitted under relevant foreign law."[1]

Congress plainly indicated that the exclusions for "proprietary trading" and the "sponsorship of" or "investment in" hedge and private equity funds "solely outside the United States" is based on where the risk, as principal, is both taken and resides, regardless of whether there may be some type of incidental relationship to the United States. This aligns exactly with the policy objectives of the Volcker Rule, which are to limit risks to U.S. financial stability and protect the American taxpayer.

Unfortunately, where Congress specifically took steps to limit the extraterritorial application of the Volcker Rule, the proposed regulations significantly expand its extraterritorial reach in a manner that not only constitutes an unwarranted interference in the non-U.S. activities of international banks conducted in accordance with home country laws and regulations, but also exacerbates the adverse impact of the Volcker Rule on U.S. markets and the U.S. economy.

[1] 156 Cong. Rec. S5894 (daily ed. July 15, 2010) (colloquy between Sen. Merkley and Sen. Levin).

In the case of proprietary trading activities, the proposal would prohibit an international bank from conducting a broad range of trading activity outside the United States if there is present any one of a number of possible connections with the United States. For example, the proposal would prohibit an international bank's trading desk in London, Toronto, Tokyo or anywhere else outside the United States from buying or selling for the account of the bank any security traded on a U.S. exchange or trading platform. In addition, trading by the head office or a non-U.S. affiliate of an international bank for its own account would be prohibited if its counterparty is a "resident of the United States", which term includes, for example, not only U.S. institutional investors, corporations, banks and their non-U.S. branches, but also, in certain circumstances, their non-U.S. affiliates. The proposal would also prohibit the international bank's trading desk outside the United States from executing an order for the account of the bank as principal through its U.S. broker-dealer affiliate as agent. None of these connections to the United States bear any relationship to where the risk of such trading activity is taken and resides.

By restricting the ability of international banking entities operating outside the U.S. to engage in proprietary trading, as may be permitted by their home country regulators, the proposed rule could impede the ability of those institutions to manage and mitigate risk. And while the rule purportedly would allow for "liquidity management", that particular exemption is too narrowly drawn to encompass activities necessary for meaningful asset/liability management.

For example, just three weeks ago, OSFI – the Canadian bank regulator – wrote to its U.S. counterparts to say that the Volcker Rule proposal's restriction on principal transactions with U.S. firms could interfere with Canadian financial institutions' ability to conduct transactions through U.S.-owned infrastructure firms (such as DTC), which, in turn, "could inadvertently hinder the ability of foreign financial institutions to efficiently manage their risks,

thereby potentially undermining the financial condition of those entities and the systemic stability of foreign financial systems." We strongly agree.

Subjecting trading activities outside the United States to such intrusive U.S. regulation also would have a significant adverse impact on U.S. capital markets, on U.S. businesses seeking capital, and ultimately on U.S. job growth. The prohibition on trading with U.S. firms will provide incentives for capital markets activity to migrate from the U.S. to jurisdictions that have determined not to impose Volcker-like trading restrictions and compliance burdens. Trading volumes – and the jobs of those involved in generating those volumes – could migrate from the U.S. to these foreign platforms. The migration of capital to outside the U.S. could raise borrowing costs for, and reduce the availability of capital to, U.S. businesses and individuals. Similarly, in the case of fund activities permissible "solely outside of the U.S." the proposed rule creates unjustified and adverse extraterritorial consequences. For instance, the Volcker Rule explicitly prohibits marketing investments in foreign funds to residents of the United States. However, the Agencies have taken this statutory prohibition further and proposed to prohibit U.S. personnel from marketing interests in a non-U.S. fund to a non-U.S. investor. This would have a direct impact on U.S. jobs: for example, Houston-based personnel working for an international bank would be precluded from marketing a bank-sponsored non-U.S. oil and gas private equity fund to investors in South America or Europe.

Moreover, the proposed rule extends the Volcker Rule's extraterritorial reach even further, by:

- not permitting international banks to invest from outside the United States in third-party funds, unless they could gain the assurance of fund managers that no U.S. residents had been or would be solicited or accepted by the funds – assurances that no fund manager likely would be able to provide; and,

- not permitting international banks to sponsor or sell non-U.S. funds to non-U.S. investors if, among other things, they could not ensure that non-U.S. investors would not, at some point in the future, sell their non-U.S. fund interests to U.S. residents — again, no fund manager likely would be able to provide any such assurance.

As a result, the proposal would impose severe restrictions on international banks' ability to sponsor and sell non-U.S. fund interests to non-U.S. persons and to invest in third party non-U.S. funds.

The proposal would also subject to the Volcker Rule many foreign investment companies that are publicly offered outside the U.S. pursuant to their home country regulations. In many countries, the principal sponsors of such funds are the home country's largest banks, which in most cases will be subject to the Volcker Rule by virtue of their U.S. operations. Under the proposal, such foreign investment companies, including Canadian mutual funds, would be prohibited from making even limited offers of these funds in the U.S. For example, a firm such as RBC would be precluded from selling interests in such funds to its own Canadian clients who travel to the U.S. on business or pleasure. Congress properly determined that U.S. mutual funds should not be subject to the Volcker Rule. The Agencies should be similarly guided and not limit the ability of Canadian and other financial firms, consistent with prevailing securities laws, to offer publicly traded foreign investment companies in the U.S.

Finally, and contrary to the view taken by the Agencies in the proposal, the Volcker Rule should not be applied extraterritorially to prohibit international banks from engaging in otherwise legally permissible lending to, and similar transactions with, any of their non-U.S. funds. Interpreting the Volcker Rule in this manner as proposed by the Agencies is contrary to both

Congressional intent and longstanding U.S. policy limiting the extraterritorial application of U.S. banking law.

In sum, the restrictions proposed by the Agencies go well beyond the requirements of the statute by impairing an international bank's ability to conduct legitimate and legally permissible funds business outside of the U.S. Equally important, these fund restrictions represent an extraordinary and unprecedented extraterritorial expansion of U.S. banking regulation into the core prudential regulation of the non-U.S. activities of international banks by their home country regulators.

Congress in enacting the Volcker Rule focused on the location where the principal risk is taken and resides (i.e., if the risk sits outside of the U.S., it is not subject to the Volcker Rule), thereby appropriately limiting the extraterritorial effects of the Volcker Rule in a manner that is consistent with longstanding principles of international comity. Those principles require U.S. and foreign authorities alike to provide appropriate deference to the laws of other countries and to limit the extraterritorial application of host country laws. Finally, focusing on the location where the principal risk is taken and resides is consistent with the policy objectives of the Volcker Rule, which are to ensure the financial stability of the U.S. and protect the American taxpayer.

The Agencies' justify their overly-restrictive interpretation of what constitutes activities conducted solely outside of the U.S. on ensuring "competitive parity" between U.S. financial institutions and internationally-headquartered firms. "Competitive parity" does not justify, we would submit, expanding the extraterritorial scope of the rule to interfere with international banks' non-U.S. activities and impose, as we discuss below, compliance and reporting burdens

on home offices. Considering their potential adverse impact on U.S. capital markets and U.S. job growth, these "competitive parity" restrictions will likely have the opposite effect and could provide precedent for foreign jurisdictions to respond similarly.

Imposing additional restrictions not called for by the statute not only undermines the intent of the provisions, but ignores the broader competitive landscape. It is important to remember that international banks not operating within the U.S. are not subject to the Volcker Rule. By further restricting activities that are otherwise permitted under the Volcker Rule the Agencies' proposal could very well lead internationally-headquartered firms to reassess their continued presence in the U.S., as well as their participation and interactions with U.S. firms and markets. Collectively, the overall impact of the Volcker Rule may lead internationally-headquartered firms to shift their trading activities to other financial centers outside of the U.S., creating a significantly adverse impact on U.S. markets.

Trading in Foreign Government and Development Bank Securities

Congress excluded from the Volcker Rule's prohibitions the purchase and sale of U.S. government, agency and municipal securities ("U.S. government securities"). This exclusion is grounded in the recognition that enabling all banks, wherever headquartered, to freely trade as principal in U.S. government securities contributes to the safety and soundness of the bank, the liquidity of these markets, and the financial stability of the U.S., including by lowering the borrowing costs of the government. Unfortunately, no exception was provided for the government securities of other countries.

Without such an exception, international banks may be forced to eliminate trading in foreign government securities with U.S. counterparties or, alternatively, build an extensive

compliance program to prove to the Agencies that their foreign government securities trading activities conform to the requirements of one of the activities permitted under the Volcker Rule, e.g., market making activities. Collectively, the ban on proprietary trading in foreign government securities and the complex and burdensome requirements associated with complying with the Volcker Rule's other trading exemptions could have a significant adverse impact on liquidity in, and pricing of, foreign government securities. This is especially troubling given that U.S. banks play a major role, even serving as primary dealers, in several key non-U.S. government securities markets around the world.

The Agencies have inquired whether they should exercise their authority under the Volcker Rule to create a regulatory exception for trading, as principal, in securities issued by other countries or by international and multilateral development banks. The IIB strongly favors such an exception and looks forward to working with the Agencies in developing appropriate criteria for its application. As OFSI has noted in its recent letter to the Agencies, many international banks "actively rely on government securities of their home jurisdictions to efficiently manage their liquidity and fund requirements at a global enterprise-wide level …". The Japanese Financial Services Agency and the Bank of Japan have jointly expressed similar concerns to the Agencies. Failure to create a regulatory exception for trading, as principal, in foreign government securities could undermine the liquidity of government debt markets outside of the U.S.

At a minimum, the requirements of the Volcker Rule should be conformed to U.S. trade agreement and treaty obligations so that, for example, debt obligations backed by Canada and its political subdivisions would be given equal treatment as required by the North American Free

Trade Agreement. To prohibit RBC and other similarly situated Canadian firms from selling, as principal, Canadian bonds to institutional U.S. clients would, we submit, violate that Agreement.

Compliance and Reporting Requirements

The proposed rule would impose complex and detailed compliance requirements on banks with substantial trading and/or fund operations. In addition, it would impose extensive quantitative reporting requirements for banks that engage in permissible forms of trading as principal – including market-making, risk-mitigating hedging, and underwriting. With respect to international firms, the proposed rule doesn't make clear whether these reporting requirements will apply to trading and fund activities both inside and outside the U.S., only within the U.S., or some combination thereof.

Further complicating this issue for international banks is that banks with consolidated trading assets and liabilities of over $1 billion or 10% of their total assets have to meet enhanced compliance and reporting standards. The proposed rule does not indicate how these thresholds would apply to international banks. Not only would there be very significant costs to implement these enhanced standards, imposing these detailed requirements on their internal operations and management of international banks outside of the United States would represent an unprecedented expansion of U.S. regulatory supervisory powers into their home country operations. This approach provides no benefit to the safety, soundness or stability of the U.S. financial system that could justify the costs related to the efforts of international banks to comply with, and the Agencies to enforce, these requirements.

Finally, the proposed rule would appear to require banks to establish and implement compliance programs as of the July 21, 2012, effective date. Given the number of outstanding

questions with respect to the scope of the exemptions and the compliance and reporting requirements for international banks, and the likelihood that the final rule will not be adopted significantly in advance of the effective date, international banks doing business in the U.S. may be placed in the utterly untenable position of deciding whether to exit the U.S. banking market, possibly violate the Volcker Rule or build a compliance system based on an overly complex and restrictive proposed compliance regime that is yet, at this time, ill-defined with respect to its application to international banks. It is critical that banks be given sufficient time to adjust to the requirements of the final rule. At a minimum, the Agencies' should make full use of the conformance period provided by the statute to give banks the time needed to come into compliance and avoid market disruptions.

Conclusion

Again, let me again thank the two chairman and ranking members, as well as the other members of the Subcommittees, for the privilege of testifying this morning. We hope that we have sufficiently highlighted the extraterritorial concerns associated with the implementation of the Volcker Rule. We believe it is imperative that the Agencies work to address the extraterritorial concerns associated with the implementation of the Volcker Rule and avoid many of the unintended consequences we have highlighted here in our testimony.

Failure to re-think the proposal could have far-reaching impact on U.S. and foreign markets. The vast prohibitions, narrow exceptions, and extensive compliance burdens of the Volcker Rule proposal will, in our view, limit banks' ability to facilitate lending, to hold inventory at levels sufficient to meet investor demand, and to actively participate in the market to price assets efficiently – thus reducing liquidity across a wide range of asset classes. The ripple

effect of that reduced liquidity could discourage investment, limit credit availability and increase the cost of capital for U.S. companies – stifling economic growth and job creation.

I look forward to your questions.