

July 14, 2016

The Honorable Janet Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chair Yellen:

I write to you regarding the treatment of a company that controls an industrial loan company under Section 619 of the Dodd-Frank Act (commonly referred to as the “Volcker Rule”). As you know, industrial loan companies are state-chartered depository institutions that operate with a special exemption under the Bank Holding Company Act (“BHCA”). Specifically, a company that controls an industrial loan company is not subject to supervision by the Federal Reserve and not subject to restrictions on its permissible scope of activities.

The Volcker Rule’s restrictions on proprietary trading and sponsorship of covered funds apply to “banking entities.” A banking entity, in turn, is defined to mean, among other things, “any company that controls an insured depository institution.” Read literally, this definition means that a company that controls an industrial loan company would be subject to the activities restrictions of the Volcker Rule. This would be a curious result because such a company is not a bank holding company under the BHCA and thus would neither be subject to the other activities restrictions of the BHCA nor comprehensive supervision by the Federal Reserve. In addition, investors that control companies that are not “predominately engaged in financial activities” (as defined in Section 102 of the Dodd-Frank Act) but control an industrial loan company could be treated as banking entities and subject to the activities restrictions contained in the Volcker Rule.

To further the Committee’s examination of the Volcker Rule’s reach to entities beyond banking entities and their affiliates, clarity from the Federal Reserve is necessary so that nonbanking market participants do not run afoul of the Volcker Rule, thereby unnecessarily restricting beneficial economic activity. Accordingly, please respond in writing to the following questions:

1. What is the Federal Reserve’s legal opinion regarding whether a company that controls an industrial loan company is subject to the activities restrictions of the Volcker Rule?

2. Is it the Federal Reserve's legal opinion that investors that control companies that are not "predominantly engaged in financial activities" but control an industrial loan company should be treated as banking entities and subjected to the activities restrictions contained in the Volcker Rule?
3. Is it the Federal Reserve's legal opinion that the definition and interpretation of "control" under the Volcker Rule must be the same definition and interpretation of "control" as is used to determine whether a company is a bank holding company under the BHCA?

Please submit your response to these questions as soon as possible but not later than August 1, 2016. Thank you for your attention to this important matter.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services



MIA LOVE
Member of Congress

cc: The Honorable Maxine Waters, Ranking Member