The Debrief

Changes Proposed to Conform Volcker Rule Regulations with Regulatory Relief Act

December 31, 2018

On December 21, 2018, the Federal Reserve Board and other agencies charged with implementing the Volcker Rule proposed regulatory revisions that would modify the definition of "banking entity" and alter the covered fund name-sharing restriction. The proposed revisions would bring the existing implementing regulations in line with statutory changes made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Regulatory Relief Act").[1] The comment period closes 30 days after the proposal is published in the Federal Register.

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"BANKING ENTITY" DEFINITION

Prior to enactment of the Regulatory Relief Act, the statutory definition of "banking entity," which defines the scope of firms subject to the Volcker Rule, included any insured depository institution, any company that controls an insured depository institution, or that is treated as a bank holding company under section 8 of the International Banking Act ("IBA"), and any affiliate or subsidiary of such entity. The definition for "insured depository institution" includes a carve-out for certain firms that function solely in a trust or fiduciary capacity.

The proposal would add an additional carve-out for an insured depository institution that satisfies two conditions.[2] First, the insured depository institution, and every company that controls it, must have total consolidated assets equal to or less than $10 billion. Second, the total trading assets and liabilities of the insured depository institution, and every company that controls it, must be equal to or less than five percent of its total consolidated assets. The proposal would not change the application of the banking entity definition with respect to foreign banking organizations.

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1 See our prior analysis regarding the Regulatory Relief Act. In addition, the agencies proposed separate and broader changes in the summer of 2018 to the Volcker Rule implementing regulations, which they describe as intended to "provide clarity about what activities are prohibited and to improve supervision and implementation of" the Volcker Rule. See our prior analysis on this separate proposal.

2 Some observers have suggested the statutory revisions to the banking entity definition should be interpreted more broadly. See, *e.g.*, Letter from Rep. Blaine Luetkemeyer to the heads of the Volcker Rule implementing Agencies and Treasury Secretary Steven Mnuchin (Dec. 21, 2018).

COVERED FUND NAME-SHARING RESTRICTION

Under the existing implementing regulations, a covered fund that is sponsored or organized and offered by a banking entity under the so-called customer fund exemption may not "share the same name or a variation of the same name with the banking entity (or an affiliate thereof)." The proposal would alter the name-sharing restriction so that under the customer fund exemption, a banking entity would be permitted to sponsor or organize and offer a covered fund with the same name or a variation of the same name as a banking entity that is an investment adviser to the fund, so long as: (1) the investment adviser is not, and does not share the same name or a variation of the same name as, an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company under section 8 of the IBA; and (2) the fund name does not use the word "bank" (continuing a requirement in the existing implementing regulations).

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Please do not hesitate to contact us with any questions.

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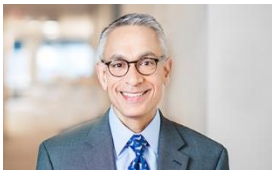

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