

Client Update

Federal Reserve Board Extends the Volcker Rule Conformance Period for Covered Funds

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Today, the Federal Reserve Board (the “FRB”) issued an order long-awaited by the financial services industry and private fund sponsors – the extension of the Volcker Rule conformance period for banking entities to conform investments in and relationships with covered funds and foreign funds for an additional year, until July 21, 2016. The FRB also announced that it intends next year to exercise its authority to grant an additional one-year extension of the conformance period, to July 21, 2017. Key points regarding the FRB’s order are below:

- The extension only applies to investments in and relationships with covered funds and foreign funds in place prior to December 31, 2013 (referred to by the FRB as “legacy covered funds”).
- All investments and relationships that were not in place prior to December 31, 2013 must be in conformance with the Volcker Rule by July 21, 2015. Therefore, covered funds and foreign funds that have been formed since the beginning of 2014 may still face considerable compliance difficulties, especially, as noted below, in the absence of further guidance on a wide range of covered fund and foreign fund issues.
- The order does not define several of the terms, including “foreign fund,” “relationship,” or “in place.” These terms are also not defined in the Volcker Rule or the rules adopted thereunder. The absence of these definitions creates some uncertainty over the scope of the extension and the term “legacy covered fund.”
- The FRB repeated its mantra that banking entities are expected to make “good-faith efforts” to conform their activities and investments to the Volcker Rule and the rules adopted thereunder during the extended conformance period. The FRB added that banking entities “are expected to make plans well in advance” of the end of the extended conformance period regarding how they will conform or divest legacy covered fund investments

in an orderly and safe and sound manner.

- The FRB said that it will also consider whether to take action regarding illiquid funds, an area of significant concern for market participants.
- The extension of the conformance period does not apply to proprietary trading activities, which banking entities must conform to the Volcker Rule's implementing regulations by July 21, 2015.
- The order does not indicate whether or when the FRB or the other Volcker Rule-implementing agencies plan to respond to various industry requests for guidance on covered fund and other Volcker Rule issues. However, the limitation of the extension to legacy covered funds means that the absence of this guidance will still create considerable compliance challenges with respect to covered funds and foreign funds. It would seem, therefore, that urgency of such guidance remains.

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Please do not hesitate to contact us with any questions.