Client Update
Volcker Rule: OCC Seeks Comment on Changes in Approach

On Wednesday, the Office of the Comptroller of the Currency (the "OCC") sought public comment on how to revise the final regulations implementing the Volcker Rule and the approach to administering those regulations. Over the past few months, various commenters have stressed the need for changes to the Volcker Rule regulations. The OCC's request for comment is the first tangible step by an implementing agency to revise the rule. We expect further actions from the other agencies in the near term and that the regulations ultimately will be streamlined to facilitate customer-facing businesses and activities and reduce compliance burdens that are not necessary to further the policy objectives of the rule. The OCC's request for public input has a 45-day comment period.

LEAD-UP TO THE REQUEST FOR COMMENT

As noted above, the OCC's request for public input follows a chorus of comments urging a re-thinking of the Volcker Rule. Below are some of the more prominent examples, culminating in the OCC's request for comment.

- **December 2016** – Staff from the Federal Reserve Bank of New York publishes a paper finding that the Volcker Rule has contributed to reduced market liquidity.[1]
- **April 4, 2017** – Federal Reserve Board Governor Daniel Tarullo shares departing thoughts. In a speech given the day before his resignation as a Federal Reserve Board Governor, Tarullo, one of the strongest defenders of the post-crisis regulatory framework, acknowledged that there was a strong case for changing the Volcker Rule. Tarullo described the Volcker Rule as "too complicated" and noted that it "applies to a much broader group of banks than is necessary to achieve its purpose."
- **June 12, 2017** – The U.S. Treasury Department releases a report that discusses the Volcker Rule's efficacy. The report, which we discuss in a previous client update, describes the

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1 Bao, Jack, Maureen O'Hara, and Alex Zhou (2016). "The Volcker Rule and Market-Making in Times of Stress," Finance and Economics Discussion Series 2016-102. Washington: Board of Governors of the Federal Reserve System.

Volcker Rule as overly complex and excessively burdensome, and urges the implementing agencies to take action to fix the rule.

- **July 28, 2017** – The Financial Stability Oversight Council ("FSOC") discusses potential changes to the Volcker Rule. Last Friday, the FSOC met to discuss potential improvements to the Volcker Rule, including the recommendations regarding the Volcker Rule made in the Treasury Department's June 2017 report.
- **August 2, 2017** – The OCC seeks public comment on revising the Volcker Rule. Wednesday's notice was the first formal action taken by a federal agency to seek public comment on changing the Volcker Rule.

THE OCC'S REQUEST FOR COMMENT AND THE ROAD FORWARD

The OCC's request for input represents a positive development for financial institutions grappling with the challenges of complying with the Volcker Rule, as the OCC is recognizing the need to seek comment on ways the rule might be improved. This suggests change will happen, although when and how such change will occur remains uncertain.

In its notice, the OCC identifies four broad areas for public comment: (1) scope of entities to which the rule applies; (2) proprietary trading restrictions; (3) covered fund restrictions; and (4) compliance program and metrics reporting requirements. The OCC emphasizes that it seeks quantitative and qualitative information and other verifiable evidence to support comments and suggestions. This type of supporting data would help the agencies explain the basis for proposed revisions to the implementing regulations.

Comments do not, however, have to be limited to these categories as the OCC is inviting comments on all aspects of the rule. Comments are not being sought on changes to the underlying Volcker Rule statute; this suggests that there likely will be a parallel process to develop legislative changes to the Volcker Rule.

Several important steps remain before any changes to the regulations may be formally adopted. Because the OCC's notice is limited to seeking public comment, there would still need to be proposed and final rulemaking. Further, as required by the underlying statute, the proposed and final rulemaking would need to be a coordinated activity among all of the other implementing agencies (the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission and the Commodity Futures Trading Commission). This process will, of course, take considerable time and effort. As leadership positions at those agencies are filled by nominees of the current administration, this process could receive more acute focus and the pace could quicken.

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Please do not hesitate to contact us with any questions.

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