

Alert

Agencies Publish Proposed Volcker 2.0 for Fund Activities

January 30, 2020

On Jan. 30, 2020, the Federal Reserve Board (“Fed”), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, and the U.S. Commodity Futures Trading Commission (collectively, the “Agencies”) asked for comment on a proposed rule (“Proposal”) to simplify and tailor compliance requirements relating to section 13 of the Bank Holding Company Act, commonly known as the “Volcker Rule.”¹ A copy of the Proposal is available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/volcker-rule-fr-notice-20200130.pdf>

In November 2019, the Agencies finalized certain amendments to the “proprietary trading” provisions of the Volcker Rule and stated that they would propose a separate rulemaking regarding the “covered fund” provisions. As indicated by the Fed, the Proposal is intended to clarify and streamline the covered fund-related provisions of the regulations by:

- Limiting the extraterritorial impact of the rule on foreign funds offered by foreign banks to foreign individuals;
- Permitting certain low-risk transactions (including intraday credit and payment, clearing, and settlement transactions) between a banking entity and covered funds for which the banking entity serves as investment adviser or sponsor;
- Simplifying existing provisions of the rule related to foreign public funds, loan securitizations, and small business investment companies;
- Permitting banking entities to invest in or sponsor certain types of funds that do not raise the concerns the Volcker Rule was intended to address, such as credit funds, venture capital funds, customer facilitation funds, and family wealth management vehicles;
- Clarifying that credit exposures to a covered fund would generally not constitute ownership interests under the Volcker Rule; and
- Clarifying that parallel direct investments made by a banking entity in the same underlying investments as a sponsored covered fund are not deemed to be investments in the fund itself.

The Proposal spans more than 160 pages (in its original format) and poses 87 separate questions on which it solicits comments (many with multiple subparts). Comments will be due by April 1, 2020.

¹ The Volcker Rule was part of the Dodd-Frank Wall Street Reform and Consumer Protection Act and restricts the proprietary trading and private investment fund activities of U.S. banks and their worldwide affiliates, as well as foreign banks with banking operations in the United States and their worldwide affiliates. Regulations implementing the Volcker Rule were finalized and jointly promulgated by the Agencies in December 2013.

SRZ is reviewing the full Proposal and will issue further *Alerts*, including a detailed summary of its provisions. In the meantime, if you have any questions concerning this *Alert*, or would like help drafting or submitting any comments, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Authored by [Joseph P. Vitale](#) and [Jessica Romano](#).

Schulte Roth & Zabel
New York | Washington DC | London
www.srz.com

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