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Alert

Fed Publishes Proposed Volcker 2.0

May 31, 2018

On May 30, 2018, the Federal Reserve Board ("Fed") asked for comment on a proposed rule (the "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 here.

The Proposal is separate from the recently enacted Economic Growth, Regulatory Reform, and Consumer Protection Act ("EGRRCP Act"), which made several changes to the Volcker Rule. Among other things, the EGRRCP Act:

- Exempts community banks – firms with less than $10 billion in total consolidated assets and with total trading assets and liabilities that are not more than five percent of total consolidated assets – from the Volcker Rule; and
- Amends the Volcker Rule's restriction on sponsoring hedge funds and private equity funds ("covered funds") to permit, in certain cases, such funds to share the name of the banking entity that serves as investment adviser to the fund.

Amendment of the Volcker Rule regulations to implement the EGRRCP Act will occur in a separate Rulemaking by the Agencies.

The Proposal would retain the general framework and restrictions of the Volcker Rule regulations, but amend them in numerous ways to "simplify and tailor compliance requirements." Among other things, the Proposal would:

- Tailor the Rule's compliance requirements based on the size of a firm's trading assets and liabilities, with the most stringent requirements applied to firms with the most trading activity;
- Streamline and clarify for all banking entities certain definitions and requirements related to the proprietary trading prohibition and limitations on covered fund activities and investments;
- Reduce metrics reporting, recordkeeping and compliance program requirements for all banking entities and expand tailoring to make the scale of compliance activity required by the Rule commensurate with a banking entity's size and level of trading activity; and
- Limit the impact of the Volcker Rule on the foreign activity of foreign banks.

[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 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") in December 2013.

The Proposal spans more than 370 pages (in its original format) and poses 342 separate questions on which it solicits comments (many with multiple subparts). While the Proposal indicates that it was based on ideas developed jointly by the Agencies, the Fed notes that publication in the Federal Register "will be delayed to allow all of the [A]gencies to consider the [P]roposal, and the final version may differ." Comments will be due within 60 days of the Proposal's publication in the Federal Register.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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