

Alert

Volcker Rule Update: Agencies Announce They Will Not Enforce Rule for Foreign Funds Until July 2021

July 18, 2019

On July 17, 2019, the five federal financial regulatory agencies jointly responsible for implementing the Volcker Rule (collectively, “Agencies”) announced that they will not enforce restrictions against certain foreign funds for an additional two years, until July 21, 2021. The announcement extends the longstanding hold on enforcing the Volcker Rule’s trading and investment bans against foreign funds that are excluded from the definition of “covered fund” under the rule. A copy of the joint statement is available [here](#).

The Agencies initially granted a one-year moratorium (“Moratorium”) on enforcement on July 21, 2017 in response to concerns from foreign banking entities, foreign government officials and others that the Volcker Rule had unintended consequences. Specifically, many expressed concern that under the Volcker Rule, certain foreign funds were excluded from the definition of “covered funds” yet may still fall within the definition of “banking entity” if they are affiliates or subsidiaries of a foreign banking entity.¹ As such, the funds themselves would be subject to the Volcker Rule, including its restrictions on proprietary trading and investing in covered funds.

In July 2018, the Agencies published a notice of proposed wide-scale revisions to the Volcker Rule, known as “Volcker 2.0.” The notice extended the Moratorium, indicating that qualifying foreign excluded funds would not be treated as banking entities for an additional year, until July 21, 2019. Today’s announcement extends the Moratorium another two years, to provide interested parties with greater certainty about the short-term treatment of qualifying foreign excluded fund while the Agencies continue to work on finalized revisions to the Volcker Rule generally.

Qualifying Foreign Excluded Funds

In order to qualify for the Moratorium, a fund must:

- Be organized or established outside of the United States and not offer or sell its ownership interests in the United States;
- Be structured such that it (i) would be a covered fund if it were organized or established in the United States or (ii) raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

¹ Which would be the case if, for example: (i) the foreign banking entity held an investment in the fund above certain thresholds; (ii) the general partner of the fund were owned by the foreign banking entity or (iii) the fund’s board of directors were affiliated with, or subject to removal by, the foreign banking entity.

- Not otherwise constitute a banking entity except for the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;
- Be established and operated as part of a "bona fide asset management business"; and
- Not be operated in a way that allows the foreign banking entity to evade the requirements of the Volcker Rule.

It is important to note that the Moratorium does not affect the Volcker Rule's prohibition on the investment in such funds by U.S. banking entities or foreign banking entities controlled by U.S. banking entities.

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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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