Regulatory Agencies Propose to Modify Volcker Rule

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February 10, 2020

On January 30, 2020, five federal regulatory agencies, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (together, the "Regulatory Agencies"), published a notice of proposed rulemaking (the "Proposed Rule") to modify Section 619 of the Dodd-Frank Act, known as the Volcker Rule.

As currently constructed, the Volcker Rule prevents banking entities from acquiring or retaining ownership interests in or sponsoring "covered funds" such as hedge, venture capital and private equity funds. The Regulatory Agencies acknowledge that the implementing regulations of the Volcker Rule have created "compliance uncertainty" and have "imposed limits on certain banking services and activities that the Volcker rule was not intended to restrict."

Previously, in November 2019, the Regulatory Agencies simplified the requirements for proprietary trading restrictions. Now, with the Proposed Rule, the Regulatory Agencies further aim to achieve three goals:

1. To facilitate capital formation by allowing banking entities to invest in qualifying venture capital funds;
2. To protect financial stability and safety by continuing to restrict banks from engaging in activities not currently permissible and by restricting certain transactions with covered funds; and
3. To provide greater clarity as to what activities are permitted, with a focus on providing consistent treatment among "U.S. registered investment companies and their foreign equivalents" (for more information on these goals please view the fact sheet released by the FDIC, here).

The Proposed Rule hopes to achieve these goals by making the below changes the Volcker Rule:

- Excluding from the definition of "covered fund" credit funds, venture capital funds, family wealth management vehicles, and customer facilitation vehicles. Further, the Proposed Rule loosens certain restrictions to the existing "foreign public funds" exclusion and expands the "loan securitization vehicle" exclusion to allow loan securitization vehicles to hold up to 5% of assets in non-loan assets;
- Clarifying that the Small Business Investment Company ("SBIC") exclusion would apply to issuers who voluntarily surrender their SBIC license during a wind-down period, provided that no new investments are made;
- Allowing banking entities to engage in a limited set of covered transactions with a covered fund that is sponsored by, advised by, or has some certain other relationship with, the fund; and
- Creating a safe harbor for bona fide senior loans and senior instruments from the definition of "ownership interest."

The comment period for the Proposed Rule ends on April 1, 2020. The press release accompanying the Proposed Rule can be found here, and the full Proposed Rule can be found here.

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