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Securities Regulation Daily Wrap Up, TOP STORY—Volcker Rule amended to exclude smaller banks, (Jul. 10, 2019)

Securities Regulation Daily Wrap Up

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The federal banking agencies have adopted a final rule that will exclude small banks from the Volcker Rule.

The banking regulatory agencies have adopted a final rule to exclude community banks from the Volcker Rule, consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and the Securities and Exchange Commission adopted the final rule to amend the regulations implementing the Rule. Under the final rule, which is unchanged from the proposal, community banks with $10 billion or less in total consolidated assets and total trading assets and liabilities of 5 percent or less of total consolidated assets are excluded from the Volcker Rule. The amendments also remove a restriction on permissible names for hedge and private equity funds. The final rule is effective upon its publication in the *Federal Register*.

Volcker Rule regulation. The Volcker Rule, found in Section 13 of the Bank Holding Company Act (12 U.S.C. §1851), generally prohibits banking entities from engaging in proprietary trading or having ownership or certain other relationships with hedge funds and private equity funds. Its purpose is to prevent financial institutions that can take advantage of the federal "safety net" from putting federal funds at risk through their trading and investment activities.

Final rule. In addition to the exclusion of banks with under $10 billion in assets, the final rule also permits a hedge fund or private equity fund, under certain circumstances, to share the same name or a variation of the same name with an investment adviser as long as the adviser is not an insured depository institution, a company that controls an insured depository institution, or a bank holding company.

According to the final rule, Section 203 of EGRRCPA, entitled "Community bank relief," modified the scope of the term "banking entity" to exclude certain community banks and their affiliates. However, the statutory exclusion does not apply to a foreign banking organization with a U.S. branch or agency, which continues to be subject to the prohibitions in Section 13 of the BHC Act.

Section 204 of EGRRCPA revised the restrictions applicable to the naming of a hedge fund or private equity fund to permit an investment adviser that is a banking entity to share a name with the fund under certain circumstances. Section 204 amended the name-sharing restriction to permit a hedge fund or private equity fund organized and offered by a banking entity to share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if:

- the investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978;
- the investment adviser does not share the same name or a variation of the same name with any such entities; and
- the name does not contain the word "bank."

Comments to proposed rule. According to the rule, trade associations representing large commercial banks, community banks, and credit unions all generally supported the agencies' proposal to implement the community bank relief provision under Section 203 of EGRRCPA. Two commenters generally opposed providing an exclusion to community banks, according to the agencies.

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Some commenters requested that the agencies limit their review to an institution's most recent applicable regulatory filing. The agencies confirmed in the final rule that a bank or savings association seeking to determine its eligibility for the exclusion may use its most recent quarterly Consolidated Report of Condition and Income (call report) as the source of data for its consolidated assets and its total trading assets and liabilities at the bank or savings association level.

The notice stated that banking organizations may use the most recent filing of the Board's FR Y-9C by its holding company as the source of data about the consolidated assets and total trading assets and liabilities of the companies controlling the bank or savings association. Additionally, institutions that meet the eligibility requirements under Section 203 of EGRRCPA are no longer subject to the requirements of the Volcker Rule, and no additional action by the agencies is required for the exclusion to take effect.

One commenter requested that the agencies generally clarify that securities held as available-for-sale do not count towards the trading assets and liabilities threshold. Two commenters requested that the agencies provide clarification that certain securities held by banks or savings associations and their holding companies are not within the category of "trading assets" for purposes of determining eligibility for the exclusion.

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