

SPEECHES & TESTIMONY

September 16, 2019

Dissenting Statement of Commissioner Rostin Behnam Regarding Amendments to the Volcker Rule

I respectfully dissent as to the Commission's decision to approve revisions to the Volcker Rule. In June 2018, when I voted against the proposed rule, I expressed that my biggest concern was that our action would encourage a return to the risky activities that led to the financial crisis, and perhaps further consolidate trading activity into a few institutions.^[1] My concern last June was that we were weakening the Volcker Rule around the edges, and I raised specific issues regarding unnecessary complexity, lack of clarity, and a flawed process that chilled dissent. Unfortunately, today's final rule does not do anything to assuage these concerns. To make matters worse, while the proposal merely threatened to kill Volcker through a thousand little cuts, the final rule goes for the throat. It significantly weakens the prohibition on proprietary trading by narrowing the scope of financial instruments subject to the Volcker Rule. What remains is so watered down that it leaves one questioning whether it should be called the Volcker rule at all. To that point, Paul Volcker himself recently sent a letter to the Chairman of the Federal Reserve criticizing the rule and stating that the rule "amplifies risk in the financial system, increases moral hazard and erodes protections against conflicts of interest that were so glaringly on display during the last crisis."^[2]

In my dissent last June, I pointed out that the proposal further complicated the Volcker rule while calling it simplification. We do the same thing in the final rule. Where once there was one set of rules for all banking entities, there will now be three categories of banking entities with different rules for each: Banking entities with Significant trading assets and liabilities, banking entities with Limited trading assets and liabilities, banking entities in between with Moderate trading assets and liabilities. While numerous commenters expressed concerns with this three-tiered compliance framework, we nonetheless are finalizing this needlessly complex system. In addition, the majority today makes "targeted adjustments" that further complicate matters. In some instances, these adjustments are at least requested by the commenters. In others, they are invented seemingly out of whole cloth.

The most troubling aspect of today's rule, though, is something new. The final rule includes changes to the definition of "trading account" that will significantly reduce the scope of financial instruments subject to the Volcker Rule's prohibition on proprietary trading. This change is described in the preamble to the final rule as avoiding having the trading account definition "inappropriately scope in" certain financial instruments, almost as if they were included in the proposal's scope by mistake. However, these financial instruments were within the scope of the 2013 rule, and they were within the scope of the proposal. Removing them now limits the scope of the Volcker rule so significantly that it no longer will provide meaningful constraints on speculative proprietary trading by banks. As such, I cannot vote for the rule.

[1] Opening Statement of Commissioner Rostin Behnam Before the Open Commission Meeting on June 4, 2018 (Jun. 4, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement060418>.

[2] Jesse Hamilton and Yalman Onaran, "Vocker the Man Blasts Volcker the Rule in Letter to Fed Chair," Bloomberg (Sep. 10, 2019), <https://www.bloomberg.com/news/articles/2019-09-10/volcker-the-man-blasts-volcker-the-rule-in-letter-to-fed-chair>.