Banking and Finance Law Daily Wrap Up, TOP STORY—Banking regulators ask for public comments on Volcker rule modifications, (Jun. 6, 2018)

Banking and Finance Law Daily Wrap Up

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Five financial regulators have requested public comments on a proposal to simplify and tailor the compliance requirements of the "Volcker Rule," the 2013 rule restricting the ability of banking entities to engage in some proprietary trading or investment fund activities. The Notice of Proposed Rulemaking was jointly issued by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission. According to a release by the OCC, comments will be accepted for 60 days after the proposal's publication in the *Federal Register*.

The proposed amendments are intended to clarify what activities are prohibited, focus requirements on entities with large trading operations, and simplify regulatory requirements. The proposal aims to reduce the burdens of compliance for small and mid-size banking entities. It would tailor the application of the Volcker Rule based on a banking entity's risk profile and the size and scope of its trading activities, with the most stringent requirements applied to firms with the most trading activity. Additionally, the amendments would:

- provide more clarity by revising the definition of "trading account" in the rule, in part by relying on commonly used accounting definitions;
- clarify that firms that trade within appropriately developed internal risk limits are engaged in permissible market making or underwriting activity;
- streamline the criteria that apply when a banking entity seeks to rely on the hedging exemption from the proprietary trading prohibition;
- limit the impact of the Volcker rule on the foreign activity of foreign banks; and
- simplify the trading activity information that banking entities are required to provide to the agencies (see *Banking and Finance Law Daily*, May 30, 2018 and May 31, 2018).

Treasury Secretary Steven T. Mnuchin issued a statement that the proposal will "meaningfully improve the regulations that implement the Volcker Rule." He stated that the Treasury Department "strongly supports changes aimed at better tailoring the application of the rule, preserving liquidity during periods of stress, decreasing unintended compliance burdens, and encouraging capital formation."

Criticism of proposed amendments. Senator Sherrod Brown (D-Ohio), Ranking Member of the Banking Committee, criticized the agencies' actions which he says, "represent another harmful step forward to implement Wall Street's agenda" and roll back the Dodd-Frank Act. Brown stated that Congress "put this rule in place after the crisis to stop big banks from taking big risks with Americans' money and "the roll backs announced last week would gut core components of the Volcker Rule. They'd make it easier for banks to take speculative bets." He stated that "It took agencies more than 3 years to finalize the Volcker Rule, which was completed in 2013 after the consideration of thousands of public comments."

Consumer advocacy group Public Citizen commented on the agencies' proposal, with financial policy advocate Bartlett Naylor stating that "It's all too telling that President Donald Trump's regulators are anxious to accommodate Wall Street's frustrations with the rules on gambling but ignore their congressional mandate to reform Wall Street's addiction to bonuses. The Volcker Rule restriction on gambling won't work unless Washington reforms compensation incentives."

Companies: Public Citizen

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