

OCC Seeks Input on Revising Volcker Regulations

August 3, 2017

Yesterday, the Office of the Comptroller of the Currency, acting independently of the other agencies charged with implementing and enforcing the Volcker Rule, requested public input on potential revisions to the Volcker Rule regulations in order to “better accomplish the purposes” of the statute while reducing compliance burdens and fostering economic growth. The OCC solicits input on ways to “tailor” requirements and “clarify key provisions”, while also requesting suggestions on how to “implement the existing rule more effectively without revising the regulation.”

Although acting alone in issuing the request, the OCC acknowledged that any revisions to the Volcker Rule regulations will require a joint rulemaking by the OCC, the Federal Reserve Board and the FDIC, in consultation and coordination with the SEC and CFTC. Those agencies reportedly agreed last week to begin work on revisions to the regulations. The OCC notes that the information it is soliciting could support revisions to the rule advanced in the recent Treasury Report (on core principles for regulating the U.S. financial system), and “may support additional revisions that are consistent with the spirit of the Treasury Report”.

The tone of the request, as well as the specific questions to commenters posed throughout the document, signal a decidedly deregulatory focus and flexibility with respect to incorporating practical changes to the Rule.

Comments are due within 45 days of publication of the release in the Federal Register, expected shortly.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or one of the following.

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Key points of note:

— While the request offers commenters an opportunity to provide input on all aspects of the Volcker Rule regulations, it highlights a number of specific questions in four broad categories, many of them the focus of industry concern and extensive comment dating back to the proposed rule:

1. The scope of entities to which the rule applies;
2. The compliance burdens imposed by the proprietary trading restrictions;
3. The breadth of the covered fund restrictions; and
4. The breadth of the compliance program and metrics reporting requirements.

— The general theme of the request is to reduce certain burdens of complying with the Volcker Rule regulations while focusing the Rule’s prohibitions more precisely on the activities and products that could expose banking entities and the financial system to undue risk.

— The specific questions posed throughout the request seek to identify potential revisions consistent with this theme, including among other things:

- Whether the restrictions of the Volcker Rule regulations are inappropriately applied to smaller banking entities and those that do not engage materially in restricted trading and covered fund activities, or to non-U.S. funds controlled by foreign banking entities and offered solely outside of the United States;
- How to curtail the unnecessary overbreadth in the scope of restricted activities and relevant definitions, and the undue complexity in the Rule’s exclusions, exemptions and definitions generally. In particular, the request highlights (1) the potentially overbroad scope of trading activities restricted under the proprietary trading provisions (e.g., via the intent-based

“purpose” criteria or the rigid “60-day rebuttable presumption” of short-term trading), and (2) the expansiveness of the definition of “covered fund,” including the fact that it captures many securitization and other vehicles not traditionally understood to be “hedge funds” or “private equity funds”;

- Whether the Volcker Rule regulations have created unanticipated liquidity and other negative effects on markets due to excessive restrictions on banking entities’ ability to provide traditional market intermediation functions;
- Whether lending, trading and other relationships with related covered funds are unnecessarily hindered by the Rule’s “Super 23A” restriction; and
- Whether the compliance program requirements, particularly in the context of metrics reporting, are effective in light of the compliance burdens they impose.

— The request is limited to those regulatory actions that the agencies could undertake within the limits of the Volcker Rule statute.

— The press release and request can be found here:

<https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-89.html>

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