Impact of Volcker Rule on Foreign Banking Organizations

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• Because of the generality of this presentation, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

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The Volcker Rule is the popular name for Section 619 of the Dodd-Frank Act, enacted in July 2010. Codified as Section 13 of the Bank Holding Company Act.

The statute prohibits (with exceptions) banking entities from:

- Engaging in proprietary trading; and
- Sponsoring, or acquiring or retaining an interest in, private equity and hedge funds.
Volcker Rule

• The statute is broad
  • Congress left regulators to construe it, without much specific direction

• October 2011: Proposed Rules
  • Proposed rules drew significant comments, including from international banking community

• December 10, 2013: Final Rule (71 pages)
  • adopted, effective April 1, 2014
  • 900 page preamble
Conformance Period

• The Volcker Rule took effect by statute on July 21, 2012
• Provides for a two-year conformance period, ending July 21, 2014
  • Conformance period recently extended by one year by Federal Reserve to July 21, 2015
• Each banking entity is expected to make good faith efforts to conform by end of conformance period
  • Develop plan for disposition or restructuring of existing prohibited investments
  • New capital commitments likely prohibited
  • Honoring capital calls under existing commitments
  • Holding on to CDOs and CLOs awaiting guidance
• Banking entities expected to terminate/divest stand-alone proprietary trading operations promptly
Conformance Period

- Two one-year extensions possible, upon application
- Further extension of up to five years available, upon application, for continued investment/activity with respect to an “illiquid fund”
- To qualify for “illiquid fund” extension, must demonstrate that retention of interest necessary to fulfill a contractual commitment in effect on May 1, 2010
  - Condition not met if a “regulatory-out” allows sale or redemption of interest
  - Banking entity required to make reasonable best efforts to get consent for sale or redemption, and to have that consent denied
- No expansion of impermissible activities or investments during the conformance period with expectation of extensions
What the Volcker Rule Covers

• Banking entities include
  • US banks and thrifts
  • Bank and thrift holding companies
  • Foreign banking organizations (FBOs) that operate a branch/agency or commercial lending company in the US
  • Affiliates of these entities (US and foreign)

• Banking entities do not include
  • A covered fund (unless it is a banking entity included in one of the first three categories above)
  • A portfolio company held by a financial holding company under the merchant banking or insurance company authority or held by a SBIC (unless it is a banking entity included in one of the first three categories above)
Prohibition on Proprietary Trading

• A banking entity may not trade a financial instrument as principal for its own trading account

• Financial Instrument
  • A security (or option on a security)
  • A derivative (or option on a derivative)
  • A contract of sale of a commodity future (or an option on same)

• Not a financial instrument
  • Loans
  • Certain commodities
  • Foreign exchange or currency
Prohibition on Proprietary Trading

• Trading Account
  • **Purpose test**: trading for short-term resale (presumed if held for fewer than 60 days) or for benefitting from short-term price movements, short-term arbitrage profits, etc.
  • **Market Risk Capital Rule test**: if a US bank or thrift or US bank or thrift holding company is subject to the US banking agencies’ market risk capital rules, a trading account includes an account used to trade in financial instruments that are both market risk capital rule covered positions and trading positions
  • **Status test**: if the banking entity is a securities dealer, swap dealer or securities-based swap dealer, all trades that would require them to be licensed as such are deemed to be in a trading account
Proprietary Trading Exclusions

• Repos or reverse repos
• Trades arising under certain securities lending or borrowing arrangements
• Trades for liquidity management pursuant to a plan
• Trades by a derivatives clearing organization* and clearing agency** in connection with their clearing and settlement activities
• Trades in connection with “excluded clearing activities”
• Trades to satisfy an existing delivery obligation
• Trades to satisfy a judicial, administrative, arbitration or similar proceeding
• Trades where the banking entity is acting solely as agent, broker or custodian
• Trades through a deferred compensation or pension plan
• Trades made in the ordinary course of collecting a debt previously contracted (DPC exclusion)

*Registered under § 5b of the Commodity Exchange Act, or exempt from registration pursuant to CFTC regulations, or a foreign derivatives organization permitted to clear for a foreign board of trade registered pursuant to CFTC regulations
Permitted Proprietary Trading

• The following trading activity as principal is permitted:
  • Trading in US government/agency securities
  • Trading in US municipal securities
    • But trading in derivatives in these two categories of securities does not come within this exemption
    • For such derivatives consider market making or risk-mitigating hedging exemptions discussed below
  • Trading on behalf of a customer in a fiduciary capacity or as riskless principal
  • Trading by a banking entity that is a regulated insurance company (foreign or domestic)
Permitted Proprietary Trading

• Foreign Government Obligations
  • Trading by a foreign subsidiary of a US banking entity that is a foreign bank or regulated securities dealer in the debt of the foreign government in the country in which the foreign subsidiary is organized
  • A foreign banking entity or affiliate (including a US affiliate) may trade in obligations issued or guaranteed by a foreign sovereign (or any agency or political subdivision) or a multinational central bank of which the foreign sovereign is a part if:
    • The banking entity is not controlled by a top-tier US banking entity and is not a US bank or thrift
    • The obligations are issued or guaranteed by the foreign banking entity’s home country sovereign (or agency or political subdivision) or a multinational central bank of which such foreign sovereign is a part
  • Trading in obligations of multilateral development banks not within these exemptions
• NB: An FBO can trade any foreign debt if it complies with the SOTUS exemption.
Permitted Proprietary Trading

- Also permitted are
  - Certain risk-mitigating hedging activities
  - Certain market-making activities
  - Certain underwriting activities
- Overall conditions to these permitted activities
  - The banking entity must maintain an internal compliance program
  - The compensation arrangements of personnel involved in these activities must not be designed to reward proprietary trading
  - The banking entity must be appropriately registered or licensed, or not subject to registration or licensing, to engage in market making or underwriting
- This is highly complex area

Permitted Trading for FBOs

- Proprietary trading by a foreign banking entity is permitted to the extent conducted solely outside the United States subject to the following conditions ("SOTUS" exemption)
  - May not be a US banking entity or controlled by a US banking entity
  - If an FBO, must be a qualifying foreign banking organization (QFBO)
  - If not an FBO, must be organized outside the US and have a majority of its business outside the US
  - The FBO or its affiliate (including relevant personnel who arrange, negotiate or execute the trades, but not those who settle or clear) must be located outside the US
  - Trading decisions must be made outside the US
  - Trades (and related hedging) must be booked and accounted for outside the US by a non-US entity
  - No financing of trade by a US branch/agency or US affiliate of the FBO
Further Conditions for FBO Exemption

- Trades may not be with or through a US entity except:
  - Trades with the foreign operations of US entity as long as no personnel of that entity who are involved in arranging, negotiating or executing the trade are in the US
  - Trades with an unaffiliated intermediary acting as principal (if the trade is promptly cleared and settled through a clearing agency or organization acting as a central counterparty)
  - Trades with an unaffiliated intermediary acting as agent if conducted anonymously on an exchange and promptly cleared and settled through a clearing agency or organization acting as a central counterparty
Deal flow under Rule 15a-6

- Under SEC Rule 15a-6, foreign broker-dealers and foreign banks acting as principal or agent can solicit securities transactions with US institutional investors if the transactions are effected through a US registered broker-dealer, often a US affiliate. However, such trades as principal by an FBO and/or its foreign affiliates through its US registered broker-dealer affiliate would constitute proprietary trading.

- Trades by an FBO or its offshore affiliates as agent for its customers are not considered proprietary trading and thus can continue to be effected through a US registered broker-dealer affiliate.
Effect on Rule 144A transactions

- Purchase by FBO or its affiliate of securities for resale in a Rule 144A transaction are prohibited as proprietary trading unless (i) within the SOTUS exemption or (ii) the exemption for permissible underwriting activities (discussed on the next slide)
- The SOTUS exemption will not be available if resale as principal is directly to US QIBs (because SOTUS exemption requires trade with an unaffiliated intermediary for prompt clearance and settlement through a clearing agency or organization acting as a central counterparty)
- Participation in a global (non-US) tranche should satisfy SOTUS exemption as long as the FBO/affiliate does not participate in the US tranche
- For US tranche, consider restructuring transaction as private placement to QIBs by issuer, with FBO/affiliate acting as agent
Effect on Rule 144A transactions

- Underwriting exemption may be available for Rule 144A transactions, but only if the trading desk underwriting position is related to a “distribution” of securities for which the bank is an underwriter
  - Distribution: registered under the Securities Act of 1933, or otherwise characterized as different from ordinary trading by virtue of selling efforts
  - Amount and type of securities in the underwriting position cannot exceed the reasonably expected near term demands of clients, customers, counterparties, etc.
  - The trading desk must use reasonable efforts to reduce the position within a reasonable time
- To rely on the underwriting exemption, banking entity is required to have a compliance program and must comply with other requirements, including compensation that does not incentivize proprietary trading
- My constitute underwriting in the US under Regulation K

Prudential backstops

- Trading in reliance on the SOTUS or any other exemption is not permissible if
  - The trading involves or results in a material conflict of interest between the banking entity and its clients, customers or counterparties unless (i) the banking entity makes clear and timely disclosure of the conflict or (ii) uses information barriers, such physical separation of personnel or functions, that address the conflict;
  - The trading would result in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or
  - The trading poses a safety and soundness threat to the institution or a threat to US financial stability
Covered Funds Prohibition

• A banking entity, as principal, may not directly or indirectly acquire or retain an ownership interest in, or sponsor, a covered fund.
• The prohibition on acquiring/retaining an ownership interest does not apply if:
  • The banking entity acts solely as agent, broker or custodian for the account of or on behalf of a customer and does not have its own ownership interest.
  • The banking entity’s ownership interest is held/controlled by it as trustee in connection with a deferred compensation or similar plan;
  • The ownership interest is acquired and held in the ordinary course of collecting a debt; or
  • The banking entity holds the interest as trustee or in a similar capacity solely for a customer that is not itself a covered fund.
Sponsorship

• A banking entity may not sponsor a covered fund, subject to certain exceptions
• Sponsorship means:
  • To serve as a general partner, managing member, trustee or commodity pool operator (CPO) of a covered fund
  • To select or control selection of a majority of directors, trustees or management of a covered fund
  • To share with the covered fund the same name or a variation of the name
Ownership Interests

- A banking entity may not acquire/retain an **ownership interest** in a covered fund, subject to certain exceptions
- Ownership interest means any equity, partnership or “other similar interest”
- “Other similar interest” is broadly defined to include
  - Right to participate in the selection/removal of general partner, or managing member, director, investment manager or adviser (but not including typical creditor’s rights in the event of a default or acceleration)
  - Right to receive a share of income, gains or profits or, after other interests redeemed or paid, the underlying assets (e.g., the “residual” in a securitization)
  - Right to receive income on a pass-through basis, or rate of return determined by reference to the performance of the underlying asset
  - Any synthetic right to receive, or be allocated, any of the foregoing
  - Does not include “restricted profit interest” (carried interest)
- Ownership interest may include an interest in a covered fund not considered an ownership or equity interest in other contexts
Ownership Interests in CLOs and CDOs

• Ownership interests in securitization vehicles
  • Many collateralized loan obligations (CLOs) and collateralized debt obligations (CDOs) provide rights to a “controlling class” of senior debt security holders to participate in the designation of investment managers or advisers
  • As a result, holders of even the most senior, highly rated debt securities may be considered to hold ownership interests
  • If the securitization vehicle is a covered fund, a debt holder may inadvertently be covered by the Volcker Rule
  • CDOs holding trust preferred securities (TruPS) issued by certain issuers have been recently specially exempted
    • The exemption is narrow
    • Review of this issue is at the “top of the list” for the Agencies

What is a Covered Fund?

• Statute prohibits investment in/sponsorship of private equity and hedge funds (not defined)

• Under the Final Rule, a covered fund includes an issuer that would be an “investment company” under the Investment Company Act of 1940 (1940 Act) but for Sections 3(c)(1) or 3(c)(7)
  • Section 3(c)(1) exempts from the definition of “investment company” funds whose securities are sold privately to less than 100 purchasers
  • Section 3(c)(7) exempts from the definition of “investment company” funds whose securities are sold privately only to “qualified purchasers”

• These two exemptions are the principal ones relied upon by private equity and hedge funds, but many other investment companies rely on these exemptions

• Concept imported from Title IV of the Dodd Frank Act, requiring registration of investments advisers to private funds
Commodity Pools

• Certain commodity pools are covered funds
  • A commodity pool is a covered pool when the CPO has claimed an exemption under Rule 4.7 under the Commodity Exchange Act (CEA)
  • The CPO is registered in connection with the operation of a pool that limits investors to qualified eligible persons (QEPs)
  • “Exempt” commodity pools are covered funds because they have characteristics similar to those of hedge funds or private equity funds
    • They are restricted to investors that meet heightened qualification standards
Foreign Covered Funds

• Certain foreign funds are covered funds
  • For a banking entity that is, or is controlled by, a US banking entity (which would include a US branch/agency of a foreign bank), a covered fund includes a foreign fund with the following characteristics
    • The fund is organized outside the US;
    • The fund’s interests are offered and sold only to non-US persons; and
    • The fund is sponsored by the US banking entity (or an affiliate).
  • Such a covered foreign fund would not include a foreign fund that, if organized or offered in the US, would not rely on Section 3(c)(1) or 3(c)(7) for an exemption from the definition of an “investment company.”
Foreign Fund Exclusion

- The Proposed Rule included as a covered fund any fund organized/offered solely outside the US to non-US persons that would have been a covered fund if organized/offered in the US—a “foreign equivalent fund”
  - The narrowed definition in the Final Rule of a foreign covered fund implies that a foreign equivalent fund is not a covered fund for purposes of sponsorship/investment by a foreign banking entity (not controlled by a US banking entity)
  - Same fund could be a covered foreign fund for a US banking entity but not for a foreign banking entity
- Investment in or sponsorship of a foreign equivalent fund by a foreign banking entity not controlled by a US banking entity should not be subject to requirements applicable to covered funds (e.g., prudential backstops, compliance program)
- Certain US connections with sponsorship or investment activity may make the exclusion unavailable
- If foreign fund not a covered fund, could be a “banking entity” if controlled by an FBO
Foreign Fund Exemption

- The Volcker Rule contains a specific *exemption* for a foreign fund. The exemption corresponds to the SOTUS exemption for proprietary trading. To qualify for the foreign fund exemption, the investor/sponsor
  - may not be a US banking entity or controlled by a US banking entity
  - if an FBO, must be a QFBO
  - if not an FBO, must be organized outside the US and have a majority of its business outside the US
  - must make investment/sponsorship decisions outside the US through an entity located and organized outside the US—*i.e.*, decision-making personnel must be outside the US
    - back office and administrative functions can be in the US
    - investment advice can be given from the US
    - US-based entity can offer and sell the interests—but only to non-US persons
Foreign Fund Exemption

• Additional conditions for foreign fund exemption
  • Fund interests may be offered and sold only in an offering that does not target US Persons (basically, compliant with SEC Regulation S, with appropriate disclosures)
    • Secondary trades
    • Multi-tier funds
    • Parallel funds
  • Fund investment/sponsorship (including any related hedging) cannot be booked or accounted for in a US entity (including in any US branch/agency)
    • No financing of any fund investment/sponsorship may be provided by a US affiliate (including any US branch/agency)
    • Conditions applicable to covered funds apply (e.g., prudential backstops and compliance program)

Investments by Foreign Funds

• No restrictions under Volcker Rule on a foreign excluded fund or foreign exempt fund investing in US portfolio companies or US securities

• An foreign banking entity would need to determine whether the investment in the foreign fund was otherwise permissible under the Bank Holding Company Act
What is Not a Covered Fund?

• Companies that do not meet the general definition of an “investment company”
  • For example, a fund may not be an investment company if it is not engaged or proposes to engage in the business of investing in securities that have a value exceeding 40% of the value of the company’s total assets (excluding cash and government securities)
• Funds that rely on an exception other than those found in Section 3(c)(1) or Section 3(c)(7) of the 1940 Act
• These could include funds invested primarily, for example, in real estate instead of securities.

Foreign Public Funds

- A foreign public fund is not a covered fund if
  - The fund is organized outside the US
  - The fund is authorized to offer and sell its interests to retail investors in the fund’s home jurisdiction (no investor suitability qualification)
  - The fund sells its interests through one or more public offerings predominantly outside the US (85% or more to non-US Persons)
  - If a US banking entity sponsors the fund, the interests must be sold predominantly to persons other than the sponsoring banking entity, its affiliates and their employees and directors
- Foreign funds that do not meet the specific conditions of this exclusion may not be covered funds for other reasons
  - They may qualify for the foreign fund exclusion (discussed above) or they may not rely on Section 3(c)(1) or Section 3(c)(7) of the 1940 Act
  - Foreign public funds may also qualify for the foreign fund exemption
Loan Securitization Vehicles

- Loan securitization vehicles are not covered funds
  - Loan securitization issuers may meet the definition of a covered fund if they rely on Section 3(c)(1) or Section 3(c)(7) of the 1940 Act
  - But the Volcker Rule was not intended to limit the ability of banking entities to sell or securitize loans
  - Thus, the definition of a “covered fund” explicitly excludes issuers of collateralized obligations secured by loans (e.g., mortgage loans, auto loans, student loans and credit card receivables), including commercial paper conduits backed by loans
  - However, there are detailed requirements for this exclusion, and securitization vehicles with assets that include securities or derivatives may not qualify for the exclusion and therefore are covered funds
  - The treatment of securitization vehicles is complex

Qualifying Covered Bonds

- The definition of “covered funds” explicitly excludes an entity owning/holding a pool of loans or other assets that would qualify for a loan securitization for the benefit of holders of “covered bonds”:
- “Covered bonds” are defined as
  - Debt obligations issued by an FBO, guaranteed by an entity owning/holding a pool of loans as described above, or
  - Debt obligations of an entity owning/holding a pool of loans described above, provided that the debt obligations are guaranteed by an FBO, and the entity is a wholly-owned subsidiary of the FBO
Other Exclusions

The following entities are also excluded from the definition of “covered funds”:

- Wholly owned subsidiaries
- Joint ventures
- Acquisition vehicles
- Registered investment companies (including seeding vehicles) and business development companies
- Foreign pension or retirement funds
- Insurance company separate accounts
- Bank-owned life insurance company separate accounts
- SBICs and certain permissible public welfare and similar funds
- Entities used by the FDIC to dispose of assets as receiver/conservator
- Others that the federal agencies choose to exclude
Permitted Fund Activities and Investments

• Customer funds
  • A banking entity may acquire ownership interests in and/or sponsor a covered fund, as a means of offering investment opportunities to its existing or future customers
  • This customer fund activity must be in connection with the banking entity’s trust, fiduciary or investment management services for customers pursuant to a written plan
  • Detailed conditions apply
  • Among other things, the banking entity:
    • cannot guarantee performance of customer funds
    • cannot share the same name as a customer fund
    • must make clear and conspicuous specified disclosures in writing to prospective investors
Permitted Fund activities and investments

• Asset-backed securities
  • A banking entity may acquire ownership interests in an issuing entity of asset-backed securities* that is a covered fund, but only in connection with the banking entity’s organization and offering of the covered fund’s ownership interests, subject, generally, to the same conditions that apply to customer funds
    • This exemption does not permit a banking entity to invest, as a passive investor, in ownership interests in securitization vehicles that are covered funds

• Underwriting and market-making activities
  • A banking entity may acquire an ownership interest in a covered fund in connection with the banking entity’s underwriting or market making of the covered fund’s ownership interests, as long as those activities conform to the Volcker Rule’s requirements for permissible underwriting and market making-related activities

*See Securities and Exchange Act of 1934, §3(a)(79)
Investment Limitations

• Per-fund limits
  • A banking entity’s and its affiliates’ investment in covered funds, as a general rule cannot exceed 3% of the value of, or the number of ownership interests in, the covered fund
    • During a seeding period of up to one year, the investment may exceed the 3% limit while unaffiliated investors are actively solicited
  • Special rules apply for calculating the per-fund investment limits for ownership interests held in
    • asset-backed securities issuers in connection with a banking entity’s organization and offering of that entity’s ownership interests and
    • covered funds whose ownership interests are underwritten by a banking entity or in which a banking entity makes a market
Investment Limitations

- Aggregate investment limits
  - The aggregate value of all ownership interests in such permitted covered fund investments cannot exceed 3% of the banking entity’s Tier 1 capital

- Capital deduction
  - A US banking entity (but not an FBO) is required to deduct from Tier 1 capital its investment in such funds
  - The Volcker Rule treatment does not correspond to Basel III risk weights and deductions for fund investments
  - The Agencies intend to review the interaction between the Volcker Rule and Basel III and propose steps to reconcile them
"Super 23A” and 23B Restrictions

- No banking entity that (i) advises or sponsors a covered fund, (ii) organizes and offers a customer fund or an issuer of ABS, or (iii) holds an ownership interest in an ABS issuer, and no affiliate of any of these, may enter into any of the following transactions with the fund*
  - A loan or extension of credit to the fund (including repos)
  - The purchase of securities issued by the fund (except for permitted ownership interests)
  - The purchase of assets from the fund
  - The issuance of guarantees, acceptances or letters of credit on behalf of the fund
  - Securities borrowing or lending or derivative transactions that result in the banking entity having a credit exposure to the fund

*Section 23A also prohibits the acceptance of securities issued by an affiliate as collateral for a loan, but as such a transaction would not be with the covered fund, it is not subject to Super 23A
“Super 23A” and 23B Restrictions

• These restrictions are called “Super 23A” because, unlike Section 23A itself, which allows affiliated transactions within limits, these prohibitions are absolute

• However, the following transactions are permitted
  • Acquisitions of ownership interests in a covered fund to the extent permitted elsewhere in the Final Rule
  • Subject to certain conditions, prime brokerage transactions (transactions that would be subject to Super 23A but are provided in connection with custody, clearance and settlement, securities borrowing and lending, trade execution, etc.) with a covered fund in which a covered fund that is managed, sponsored or advised by the banking entity or its affiliates has taken an ownership interest (a “second-tier fund”)

• The “market terms” requirement of Section 23B of the Federal Reserve Act also applies, as if the banking entity were a bank and the fund it sponsors or advises, its affiliate
Other Permitted Fund Investments/Activities

- Risk-mitigating hedging activities
  - Sponsorship of, and investment in, covered funds engaged in permitted risk-mitigating hedging activities, subject to extensive conditions, including a specific internal compliance program

- Insurance companies
  - Investment and sponsorship by regulated foreign and domestic insurance companies of any covered funds, if conducted in compliance with applicable insurance investment laws
Prudential Backstops

• No permitted fund investments and activities are permissible if
  • The investment/activity involves or results in a material conflict of interest between the banking entity and its clients, customers or counterparties, unless
    • The banking entity makes clear and timely disclosure of the conflict, or
    • The banking entity uses information barriers, such as physical separation of personnel or functions, that address the conflict
  • The investment/activity results in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy
  • The investment/activity poses a safety and soundness threat to the institution or a threat to US financial stability
Other Regulations Not Pre-empted

• None of the activities or investments permitted under the Volcker Rule pre-empt other applicable investment or activity limitations that apply to banking entities and their affiliates
  • A banking entity must evaluate any such investment/activity under both the Volcker Rule and other regulations of the Board of Governors of the Federal Reserve applicable to investments and activities by banking entities and their affiliates
  • For example, an FBO may be able to hold 10% of a US real estate fund under the Volcker Rule
    • However, the FBO may not be able to invest in more than 4.9% of the ownership interests of such a fund under other applicable provisions of the Bank Holding Company Act and Regulation K
Compliance Programs

• Applies to all banking entities (including FBOs) engaged in permitted proprietary trading or permitted covered fund investment/activity
  • If an FBO and its affiliates are not engaged in proprietary trading (other than trading in US government obligations) or covered fund investment/activity, they are not required to establish a Volcker-Rule specific compliance program
    • However, they will need to determine whether they are engaging in such activities.
• Banking entities with such activities/investments that have total worldwide consolidated assets of $10 billion or less need only refer to the requirements of the Volcker Rule in their compliance policies and procedures and make “adjustments as appropriate given the activities, size, scope and complexity of the [banking entity].”
Six-point Compliance Program

• All other banking entities engaged in such activity must implement a compliance program that meets the following six criteria
  • Written policies and procedures reasonably designed to document, describe, monitor and limit proprietary trading activities, and activities and investments with respect to covered fund activities, to ensure compliance with the Rule
  • A system of internal controls reasonably designed to monitor compliance with the Volcker Rule, and to prevent the occurrence of activities or investments that are prohibited by the Rule
  • A management framework that delineates responsibility and accountability for compliance with the Volcker Rule and includes management review of trading limits, strategies, etc.
  • Independent testing and audit of the effectiveness of the compliance program
  • Training for trading personnel and managers, as well as other “appropriate” personnel, to appropriately implement and enforce the compliance program
  • Records sufficient to demonstrate compliance with the Volcker Rule.
Enhanced Compliance Programs

- Enhanced minimum standards for compliance programs are required of banking entities that
  - as of the previous calendar year-end, had total consolidated assets of $50 billion or more or, in the case of an FBO, had total US assets of $50 billion or more;
  - Engage in permitted proprietary trading and have a minimum level of trading assets and liabilities that trigger the reporting requirements described on the next slide; or
  - Otherwise are required to meet such enhanced standards by the applicable US regulatory agencies
Reporting and Recordkeeping Requirements

• An FBO is subject to specific reporting and recordkeeping requirements if
  • it is engaged in permitted proprietary trading activity and
  • the average gross sum of the FBO’s trading assets and liabilities of its combined US operations (excluding trading assets and liabilities involving US government or agency obligations) over the previous four quarters is greater than or equal to
    • $50 billion between June 30, 2014 and April 29, 2016
    • $25 billion between April 30, 2016 and December 30, 2016
    • $10 billion beginning on December 31, 2016
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