

Client Alert

July 8, 2016

Federal Reserve Officially Extends Volcker Rule Conformance Period with Respect to “Legacy Covered Funds” to July 21, 2017

The Board of Governors of the Federal Reserve System (“Federal Reserve”), consistent with its previously announced intention, extended the conformance period with respect to investments in and relationships with covered funds and foreign funds subject to the provisions of Section 13 of the Bank Holding Company Act of 1956 (the “Volcker Rule”) that were in place prior to December 31, 2013 (“legacy covered funds”).¹

The Federal Reserve’s July 7, 2016 order (the “Order”), extends until July 21, 2017 the deadline for banking entities to conform their investments in and relationships with legacy covered funds to the Volcker Rule’s requirements. This is the last extension of the conformance period permitted by statute. The Order did not extend the conformance period for a banking entity’s investments in or relationships with covered funds made on or after December 31, 2013 or to its proprietary trading activities. Such activities were required to come into conformance by July 21, 2015.

The Volcker Rule generally prohibits a banking entity² from engaging in proprietary trading or from sponsoring or investing in private equity funds and hedge funds (“covered funds”),³ subject to a number of exemptions.⁴ In December 2013, the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Commodity Futures Trading Commission (together, the “Agencies”) issued a final rule (the “Final Rule”) to implement the Volcker Rule.⁵

The Volcker Rule became effective on July 21, 2012. The statute, however, allows banking entities two years, until July 21, 2014, to conform to the new requirements.⁶ The statute also provides the Federal Reserve with the authority to extend the conformance period for up to three one-year periods, one year at a time.⁷ Accordingly, at

¹ See BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Order Approving Extension of Conformance Period Under Section 13 of the Bank Holding Company Act (July 7, 2016), available at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160707a1.pdf>. The press release announcing the Order may be found here: <http://www.federalreserve.gov/newsevents/press/bcreg/20160707a.htm>.

² Subject to certain exceptions, “banking entity” as defined in the Final Rule means: (i) any insured depository institution (IDI); (ii) any company that controls an IDI; (iii) any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and (iv) any affiliate or subsidiary of any entity described in (i) through (iii). See 12 C.F.R. § 248.2(c).

³ See 12 C.F.R. § 248.10(b)(defining the term “covered fund”).

⁴ See 12 U.S.C. § 1851(a)(1); see also 12 CFR §§ 248.3(a); 248.10(a).

⁵ See Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5536 (Jan. 31, 2014).

⁶ 12 U.S.C. § 1851(c)(2).

⁷ *Id.* The Federal Reserve is also authorized, upon application by a banking entity, to grant an extension of the conformance period for up to five years for certain investments in certain illiquid funds. See 12 U.S.C. § 1851(c)(3). The Federal Reserve noted in the Order that it will “continue to consider whether to take action regarding illiquid funds.” Further, the Federal Reserve has stated that it expects to provide

Client Alert

the same time the Agencies issued the Final Rule in December 2013, the Federal Reserve extended the conformance period for an additional year, until July 21, 2015.⁸

On December 18, 2014, the Federal Reserve granted a limited extension of the conformance period, until July 21, 2016, with respect to a banking entity's investments in and relationships with legacy covered funds (the "2014 Order").⁹ In the 2014 Order, the Federal Reserve stated that it planned to extend the conformance period with respect to legacy covered funds for an additional year, the maximum extension permissible under the statute, to July 21, 2017. The Order announced on July 7, 2016 makes the extension official.

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additional information in the "near term" regarding how it will address applications with respect to such investments.

⁸ See BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Order Approving Extension of Conformance Period (Dec. 10, 2013), available at: <https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf>.

⁹ See BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, Order Approving Extension of Conformance Period Under Section 13 of the Bank Holding Company Act (Dec. 18, 2014), available at: <https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20141218a1.pdf>.