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OCC Bulletin 2020-8 | February 28, 2020

Volcker Rule Covered Funds: Notice of Proposed Rulemaking

Replaced - See OCC 2020-71

Summary

On February 28, 2020, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the U.S. Securities and Exchange Commission (collectively, the agencies) published a notice of proposed rulemaking addressing the regulations that implement section 13 of the Bank Holding Company (BHC) Act, commonly known as the Volcker rule. The proposed amendments are intended to continue the agencies' efforts to improve and streamline the regulations implementing section 13 of the BHC Act by proposing to modify and clarify requirements related to the covered fund provisions. The agencies will accept comments on this notice of proposed rulemaking through April 1, 2020.

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Note for Community Banks

Community banks that have total consolidated assets equal to \$10 billion or less and total trading assets and liabilities equal to 5 percent or less of total consolidated assets are generally exempt from the Volcker rule. See 12 CFR 44.2(r)(2) and OCC Bulletin 2019 32, "Volcker Rule: Final Rule."

Highlights

The notice of proposed rulemaking would:

- permit the activities of qualifying foreign excluded funds;

- revise the exclusions from the definition of covered fund for foreign public funds, loan securitizations, and small business investment companies;
- create new exclusions from the definition of covered fund for credit funds, qualifying venture capital funds, family wealth management vehicles, and customer facilitation vehicles;
- permit certain transactions that could otherwise be prohibited under 12 CFR 44.14 (commonly known as Super 23A);
- modify the definition of "ownership interest"; and
- provide that certain investments made in parallel with a covered fund as well as certain restricted profit interests held by an employee or director need not be included in a banking entity's calculation of its ownership interest in the covered fund.

Background

Section 13 of the BHC Act generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (defined in the implementing regulations as "covered funds"). Authority for developing and adopting regulations to implement the prohibitions and restrictions of section 13 of the BHC Act is shared among the agencies. The agencies issued a final rule implementing section 13 of the BHC Act in December 2013 (the 2013 rule), and those provisions became effective on April 1, 2014.

The agencies published a notice of proposed rulemaking on July 17, 2018, that proposed amendments to the 2013 rule. On November 14, 2019, the agencies published a final rule that adopted many of the proposed changes concerning proprietary trading and compliance program requirements as well as targeted changes to the covered fund provisions. The preamble to the 2019 final rule stated that the agencies would continue to consider other aspects of the covered fund provisions and intended to issue a separate proposed rulemaking that specifically addresses those areas.

This notice of proposed rulemaking would modify and clarify the regulations concerning covered funds and would address certain related issues, including qualifying foreign excluded funds.

Further Information

Please contact Tabitha Edgens, Counsel, or Mark O'Horo, Senior Attorney, Chief Counsel's Office, at (202) 649-5490; or Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, at (202) 649-6360.

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Related Link

- [Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds \(PDF\)](#)

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