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Risks



Business

SEC Final Rule amends Volcker Rule

December 16, 2019

The SEC, OCC, FDIC, CFTC, and the Federal Reserve Board jointly issued a Final Rule amending Section 13 of the Bank Holding Company Act, commonly referred to as the “Volcker Rule.” The amendments narrow the scope of the Volcker Rule’s prohibitions on banking entities’ proprietary trading and investment in, or sponsorship of, private investment funds (covered funds), as well as clarify regulatory obligations and reduce compliance burdens for smaller banking entities.



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Compliance program requirements

The Final Rule provides a three-tiered approach for compliance program requirements, which is determined by a banking entity’s total consolidated trading assets and liabilities, as follows:

- banking entities with total consolidated trading assets and liabilities of at least \$20 billion are considered to have “significant trading assets and liabilities” and remain subject to current Volcker Rule compliance programs.
- banking entities with total consolidated assets and liabilities between \$1 billion and \$20 billion are considered to have “moderate trading assets and liabilities” and may satisfy their compliance program requirements by referring to the applicable Volcker Rule sections in their existing compliance policies and procedures.
- banking entities with total consolidated trading assets and liabilities of less than \$1 billion are considered to have “limited trading assets and liabilities,” and there is a presumption of compliance with the Volcker Rule.

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Proprietary trading restrictions

Under the existing rule, a trade may be subject to a ban if it meets any one of three tests: (1) a short-term intent test, (2) a market risk capital test, or (3) a dealer test. The amendments eliminate the rebuttable presumption in the short-term intent test that a position held less than 60 days is prohibited proprietary trading. Banking entities will now be able to enter and exit trading positions for their own accounts within 60 days, without being presumed to be in violation of the ban on proprietary trading. The amendments also revise the dealer test to remove the “for any purpose” language, thereby narrowing the dealer test to dealer trading activity and not to other financial instrument transactions.

Further, the amendments expand the qualified exclusions to the prohibited proprietary trading to also include foreign securities and foreign exchange transactions. This change was made to increase the capacity of banking entities to manage liquidity in the international environment.

Covered fund activities

The revisions provide limited changes related to underwriting, market making, and risk-mitigating hedging activities by banking entities with respect to a covered fund, as well as investment in, or sponsorship of, covered funds by foreign banking entities occurring solely outside the United States. These revisions include the exclusion of third-party covered funds and the permission of transactions in covered funds as an intermediary for a customer that is not itself a banking entity.

Compliance date

Banking entities must comply with the Final Rule by January 1, 2021 and may voluntarily comply in whole or in part beginning January 1, 2020.

Source:

Grant Thornton, On the Horizon October 3, 2019.

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