2019 Banking Law Committee Meeting
Washington, D.C.

Volcker Rule Panel
January 11, 2019
Volcker Rule Changes

PRESENTED BY
ABA BANKING LAW COMMITTEE MEETING

January 12, 2019
Panelists

1. Moderator: Carter McDowell, SIFMA
2. Anna Harrington, Barclays
3. Randall Guynn, Davis Polk
4. Curtis Tao, Citi
Volcker Rule

December 10, 2013 the five Volcker Agencies issued the final rules implementing the Volcker Rule.

On July 17, 2018 the five Volcker Agencies (OCC, Federal Reserve, FDIC, SEC and the CFTC) released a Notice of Proposed Rulemaking\(^2\) Revising the 2013 Final Rule Implementing Section 13 of the BHC Act (the Volcker Rule).

SIFMA filed a comment letter with the Agencies on October 17, 2018.\(^3\)

- While many of the proposed changes could improve implementation of Section 13, a number of the suggested changes are inconsistent with the language of Section 13 and would introduce other intended consequences.

- The following slides summarize the SIFMA recommendations to the five Volcker Agencies in the areas of proprietary trading, covered funds, and compliance and metrics.

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\(^1\)83 Fed. Reg. at 33495.


\(^3\)SIFMA Comment Letter: https://www.sifma.org/resources/news/sifma-comments-on-proposed-changes-to-the-volcker-rule/
Proprietary Trading

Accounting Prong:

- The accounting prong is overbroad and not consistent with the statutory definition of "trading account".
- Implementation would more inefficient than current short-term intent prong.
- May not include exclusion for holding a substantial amount of longer-term positions.

- Accounting prong should be replaced with a third prong:
  - Third prong should not apply to any LIMITED TAL Firms or MRC Firms, as they are already in compliance.
  - Needs a rebuttal presumption of compliance for positions held 60 + days
  - Needs a challenge procedure for positions held less than 60 days.
  - This can be an improved version of existing short-term intent prong.
  - This can be based on portion of a banking entity’s TAL that constitutes short-term trading positions.

Liquidity Management Exclusions:

- Exclusions from proprietary trading should be expanded to include physically-settled foreign exchange forwards, foreign exchange swaps, and cross-currency swaps.
### Covered Funds

**Definition:**

- The Agencies should have one single definition of “covered fund” based on the definition of “investment company” in the Investment Company Act.
- Implementation would more inefficient than current short-term intent prong.
- May not include exclusion for holding a substantial amount of longer-term positions.

**Modified Exclusions:**

- Exclusions for foreign public funds and loan securitizations exclusions need to be revised.
- Exemptions should be available for typical loan securitizations and non-U.S. retail funds.

**New Exclusions**

- Need new exclusions from the definition of covered funds for certain family wealth management vehicles, qualifying customer facilitation structures, qualifying credit funds, and qualifying long-term investment funds.
- This would give clarity to covered fund definition by focusing the scope on funds that participate in short-term proprietary trading or other high risk activities, meant to be addressed by Section 13.
Compliance & Metrics

Metrics Requirements:

- Proposal would give numerous new reporting requirements on top of the majority of existing metrics required under the 2013 Final Rule.
- The quantitative measurements identifying information requirements, the narrative statement requirement, or other granular data reporting requirements included in the proposal should not be adopted.

Agency Coordination:

- Section 13 interpretation needs to be coordinated more formally between The Agencies.
- Majority of compliance and metrics requirements in 2013 Final Rule are not mandated by Section 13 of BHC Act. Therefore the Agencies can tailor these requirements to eliminate unnecessary duplication.

Compliance Program

- Appendix B needs to be removed from the 2013 Final Rule.
- Definition of trading desk needs to be revised to be in line with the approach given in the Preamble to the Proposal.
Thank You!

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CARTER MCDOWELL, ANNA HARRINGTON, RANDALL GUYNN, AND CURTIS TAO
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