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Legal Update

Volcker Rule Revisions Adopted by Agencies

The US federal banking and functional regulators ("Agencies")[1] have finalized revisions to the proprietary trading and compliance program provisions of the Volcker Rule (the "2019 Revisions").[2] The 2019 Revisions implement some, though not all, of the changes that had been proposed by the Agencies in a May 2018 notice of proposed rulemaking ("2018 Proposal").[3]

Subject to the statutory constraints, the 2019 Revisions are intended to (i) establish a more risk-based approach to Volcker Rule compliance, (ii) make the implementation of the regulation more efficient and less burdensome by reducing its complexity and (iii) update the existing regulations to reflect the experiences of the industry and the regulators. While the 2019 Revisions address many of the implementation and compliance issues raised by the proprietary trading and compliance program sections of the current regulation and some issues related to covered funds, the Agencies have indicated that they intend to issue a notice of proposed rulemaking at a later date to address additional significant changes that they are considering for covered funds.[4]

The 2019 Revisions become effective on January 1, 2020, and compliance will be required on January 1, 2021, although there is an option for early adoption after the effective date.

I. Tailored Compliance Requirements

The 2019 Revisions tailor the application of the Volcker Rule by creating categories of banking entities based on their levels of trading activity. Specifically, banking entities are divided into the following categories:

- Entities with "significant trading assets and liabilities," meaning consolidated gross trading assets and liabilities of at least $20 billion (excluding obligations of or guaranteed by the United States, any agency of the United States or any US government-sponsored enterprise), which is an increase from the $10 billion threshold set forth in the 2018 Proposal;
- Entities with "moderate trading assets and liabilities," meaning consolidated gross trading assets and liabilities of less than $20 billion, but greater than or equal to $1 billion; and
- Entities with "limited trading assets and liabilities," meaning consolidated gross trading assets and liabilities of less than $1 billion.[5]

Non-US banking entities determine their level of trading assets and liabilities by reference to the aggregate assets of their combined US operations ("CUSO"). This is a change from the 2018 Proposal, which would have required non-US banking entities to use aggregate assets of their worldwide operations to determine if they had limited trading assets and liabilities.

Therefore, under the 2019 Revisions, non-US banking groups will be subject to the most onerous Volcker Rule compliance obligations only if CUSO trading assets and liabilities equal or exceed $20 billion. Non-US banking groups with CUSO trading assets and liabilities that equal or exceed $1 billion but are less than $20 billion will be in the moderate trading assets and liabilities category. Non-US banking groups with CUSO trading assets and liabilities of less than $1 billion will be in the limited trading assets and liabilities category.

Banking entities with significant trading assets and liabilities are required to have a comprehensive six-pillar Volcker Rule compliance program similar to that required by the current regulation. Banking entities with moderate trading assets and liabilities are subject to reduced compliance obligations tailored to their trading activities. Banking entities with limited trading assets and liabilities are presumed to be in compliance with the Volcker Rule unless an Agency determines that they were engaged in a prohibited activity and overcomes the presumption of compliance. The Agencies also have the authority under _.20(h) to apply additional requirements to a banking entity with moderate or limited trading assets and liabilities by making an individualized determination following notice and response procedures.

While the stratification of banking entities is based solely on the banking entity's trading assets and liabilities, the applicable level of compliance program obligations resulting from that trading measure apply equally to covered fund activities. Therefore, banking entities with "significant" trading operations will be subject to the most onerous compliance program requirements not only with respect to their trading activities, but also with respect to their covered fund activities. Likewise, banking entities with only "moderate" or "limited" trading activities are eligible for reduced compliance obligations with respect to both their trading and covered fund activities.

The implications of the stratification of banking entities into categories based on their trading assets and liabilities is discussed in more detail below in Part IV.

II. Proprietary Trading

A. CHANGES TO "TRADING ACCOUNT" DEFINITION

The 2019 Revisions significantly revise the definition of a "trading account" by modifying one of the three prongs in the current definition and inverting the related 60-day rebuttable presumption of proprietary trading.[6] The 2019 Revisions do **not** adopt the accounting prong from the 2018 Proposal, which was subject to considerable industry criticism, nor do they modify the market risk capital rule prong of the current definition.

1. Narrowing of the Application of the Short-Term Intent Prong

The 2019 Revisions retain the "short-term intent" prong (subparagraph _.3(b)(i) of the definition of trading account). Rather than replace the short-term intent prong with an "accounting prong" as had been proposed, the 2019 Revisions narrow the application of the short-term intent prong so that it applies only to banking entities that are not subject to the market risk capital rule prong and have not elected to comply with the market risk capital rule prong for purposes of the Volcker

Rule. The Agencies indicate that the short-term intent prong was intended to cover a substantially similar scope of activities as the market risk capital rule prong, and therefore, there is no reason to apply both prongs to the same banking entity.

The market risk capital rule is a part of the regulatory capital requirements that applies to US bank and savings and loan holding companies and US insured depository institutions with aggregate trading assets and liabilities that exceed either 10 percent of their total assets or $1 billion. It requires covered institutions, which typically are larger banking entities, to measure and hold capital to cover their exposure to market risk. Such required market risk capital coverage is in addition to the capital those institutions are required to hold under the regulatory capital requirements to cover other types of risk.

Under the 2019 Revisions, a banking entity that is not subject to the US market risk capital rule, either (i) because its aggregate trading assets and liabilities do not exceed the relevant thresholds or (ii) because it is a non-US banking entity, may elect to evaluate its purchases and sales of financial instruments for purposes of the Volcker Rule as if the banking entity were subject to the market risk capital rule.

A banking entity that makes the election will need to determine if each purchase or sale of a financial instrument is both a covered position and a trading position under the market risk capital rule. If a purchase or sale of a financial instrument is a covered position and a trading position under the market risk capital rule, then it will be deemed for the banking entity's trading account under the market risk capital prong of the Volcker Rule and potentially subject to the prohibition against proprietary trading. A non-US banking entity that elects to apply the market risk capital rule prong for Volcker Rule purposes presumably will need to build out the infrastructure necessary to identify the purchases and sales of financial instruments that will be subject to the Volcker Rule under the US market risk capital rule.

A banking entity that elects to comply with the market risk capital prong will be required to apply the market risk capital rule prong to all of its wholly-owned subsidiaries to ensure consistent application of the trading account definition. This option will provide smaller and non-US banking entities with greater flexibility in structuring their Volcker Rule compliance programs.

2. Inverting the 60-Day Presumption

The 2019 Revisions effectively invert the existing rebuttable presumption that holding a financial instrument or related risk for fewer than 60 days is prohibited proprietary trading (subparagraph_.3(b)(2)) and replace it with a new presumption that financial instruments that are held (and have their risk held) for 60 days or more are not within the short-term intent prong. This new presumption would not be available to banking entities that are subject to or have elected to be subject to the market risk capital rule prong. This change appears to have been based on industry feedback on the existing presumption and proposed changes, and the Agencies' decision not to eliminate the short-term intent prong.

B. MARKET RISK PARITY EXCLUSION

The 2019 Revisions add a new exclusion for any purchase or sale of a financial instrument that does not meet the definition of a "trading asset" or "trading liability" under the reporting requirements of the market risk capital rule. Therefore, banking entities that are subject to the short-term intent prong or dealer prong will be permitted to exclude instruments that are excluded from the market risk capital rule, even though the market risk capital rule prong may not apply to the banking entity.

C. EXPANSION OF LIQUIDITY MANAGEMENT EXCLUSION

The 2019 Revisions expand the current liquidity management exclusion to the proprietary trading prohibition by allowing banking entities to use certain financial instruments that are not "securities" as part of liquidity management activities. Thus, banking entities clearly are authorized to use foreign exchange forwards, foreign exchange swaps and physically settled cross-currency swaps for liquidity management purposes if these are entered into in accordance with a documented liquidity management plan and comply with the other requirements of the current liquidity management exclusion for securities. In addition, the 2019 Revisions expand on the 2018 Proposal by authorizing banking entities to use non-deliverable cross-currency swaps for liquidity management purposes.

D. ERROR CORRECTION EXCLUSION

The 2019 Revisions adopt the proposed exclusion to the proprietary trading prohibition for purchases or sales of financial instruments that (i) were made in error while the banking entity was engaged in a permitted or excluded activity or (ii) are undertaken to correct such an error. The Agencies expect banking entities will make reasonable efforts to prevent errors from occurring, and the exclusion is available only if relevant facts and circumstances indicate that the trade was truly made in error. Citing duplicative and undue costs, however, the Agencies decided against adopting a provision in the 2018 Proposal that would have required the banking entity to transfer erroneously acquired financial instruments to a separately managed trade error account for disposition by personnel who are independent from the traders who made the initial error.

E. MATCHED DERIVATIVES EXCLUSION

The 2019 Revisions add a new exclusion to the proprietary trading prohibition for purchases or sales of financial instruments in matched swap or security-based swap transactions involving a customer-driven transaction if (i) the matching transactions are entered into contemporaneously; (ii) the banking entity retains no more than minimal price risk; and (iii) the banking entity is not registered as a dealer, swap dealer, or security-based swap dealer. This exclusion originated from the Agencies' review of industry feedback on the difficulty associated with engaging in loan-related swaps and related hedges when the market making exemption is not clearly available to a banking entity.

While the 2019 Revisions do not explicitly address loan-related swaps, the preamble discussion indicates that the Agencies expect (i) matched loan-related swaps will qualify for the new matched derivatives exclusion and (ii) unmatched loan-related swaps will not come within the revised definition of the trading account. Additionally, the new matched derivatives exclusion is not limited to loan-related swaps and is available in connection with any customer's end-user activity.

F. MORTGAGE SERVICING RIGHTS AND ASSETS EXCLUSION

The 2019 Revisions also add a new exclusion for purchases or sales of financial instruments that are used to hedge a banking entity's mortgage servicing rights or assets under the entity's hedging strategy. As with the market risk parity exclusion, this new exclusion permits banking entities that are subject to the short-term intent prong or dealer prong to exclude mortgage servicing rights and assets from the proprietary trading prohibition. The rationale behind this exclusion is to make the short-term intent prong consistent with the market risk capital prong, which already excludes such rights and assets.

G. RESERVATION OF AUTHORITY

The 2018 Proposal would have added a reservation of authority to the Volcker Rule that would have allowed an Agency to determine on a case-by-case basis and subject to notice-and-response that a particular purchase or sale of a financial instrument either was or was not for the trading account. As part of the 2019 Revisions, the Agencies determined that they would not add a reservation of authority because it was unnecessary in light of other changes made in the final rule. However, as noted above, the Agencies reserve the authority to apply additional requirements to the proprietary trading or covered fund activities of a banking entity that has moderate or limited trading assets and liabilities.

H. "TRADING DESK" DEFINITION

Certain aspects of the Volcker Rule apply at the "trading desk"-level of a banking entity. The 2019 Revisions modify the definition of a "trading desk," which currently is defined as the smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate. The 2019 Revisions replace that definition with a multi-factor definition that aligns the definition of trading desk in the Volcker Rule with the definition in the Basel Committee on Banking Supervision's minimum capital requirements for market risk.

Under the 2019 Revisions, a trading desk is a unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof that is:

i. Structured by the banking entity to implement a well-defined business strategy;
ii. Organized to ensure appropriate setting, monitoring, and management review of the desk's trading and hedging limits, current and potential future loss exposures, and strategies; and
iii. Characterized by a clearly defined unit that:
    a) Engages in coordinated trading activity with a unified approach to its key elements;
    b) Operates subject to a common and calibrated set of risk metrics, risk levels, and joint trading limits;
    c) Submits compliance reports and other information as a unit for monitoring by management; and
    d) Books its trades together.

However, for a banking entity that calculates risk-based capital ratios under the market risk capital rule (or its consolidated affiliate), a trading desk is the unit of organization that is established by the banking entity or its affiliate for purposes of market risk capital calculations under the market risk capital rule.

I. CHANGES TO THE UNDERWRITING AND MARKET-MAKING EXEMPTIONS

The 2019 Revisions retain the current requirement that a trading desk's positions established in reliance on the underwriting and market-making exemptions in _.4 cannot exceed the reasonably expected near-term demands ("RENTD") of clients, customers and counterparties. Under the 2019 Revisions, however, compliance with the RENTD condition is presumed, under new section _.4(c), if a banking entity establishes, implements, maintains, and enforces internal limits for each trading desk.

As revised, the underwriting exemption continues to require that the banking entity establish, implement, maintain, and enforce internal limits for each trading desk based on the: (i) amount, types and risk of its underwriting position; (ii) level of exposures to relevant risk factors arising from its underwriting position; and (iii) period of time a security may be held. For the market-making exemption, the banking entity continues to be required to establish internal limits for each trading desk based on the: (i) amount, types and risk of its market maker positions; (ii) amount, types and risks of the products, instruments and exposures the trading desk may use for risk management purposes; (iii) level of exposures to relevant risk factors arising from its financial exposure; and (iv) period of time a financial instrument may be held. The processes for setting and reviewing trading desk-level limits should continue to be subject to internal policies and procedures. However, the 2019 Revisions, unlike the 2018 Proposal, do not require banking entities to report limit increases or breaches to the appropriate Agency. The Agencies retain authority to oversee and review internal risk limits and may refute the presumption of compliance if facts and circumstances indicate that the banking entity is engaging in an activity that is not based on the trading desk's RENTD. Additionally, banking entities are expected to take action as promptly as possible after a limit breach to bring the trading desk into compliance and to establish and follow written procedures for handling limit increases or breaches.

Banking entities with significant trading assets and liabilities are required to have a compliance program under subpart D for underwriting and market-making activities (i.e., reasonably designed written policies and procedures, internal controls, analyses and independent testing identifying and addressing products, instruments, exposures, limits, authorization and escalation related to the trading desk's exempted activities). Banking entities with moderate trading assets and liabilities are not required to have an exemption-specific compliance program, but must still comply with the terms of the exemption. Banking entities with limited trading assets and liabilities are presumed to comply with the Volcker Rule and are not required to have a Volcker Rule compliance program.

J. MARKET-MAKING HEDGING AND INTER-AFFILIATE TRADING ACTIVITY

The 2018 Proposal requested comment on whether affiliated trading desks should be permitted to treat each other as a client, customer or counterparty for purposes of establishing internal risk limits or RENTD levels under the market-making exemption. Alternatively, the Agencies sought comment on whether one desk should be allowed to treat a transaction as permissible market-making and the other, affiliated desk treat the same transaction as a risk-mitigating hedge.

The 2019 Revisions do not contain changes addressing market-making hedging. However, the Agencies indicated in the preamble to the 2019 Revisions that a trading desk (i) may undertake market-making risk management activities for one or more affiliated trading desks and (ii) may rely on the exemption for market making-related activities for its transactions with affiliated trading desks. The Agencies also clarify that banking entities may not treat affiliated trading desks as "clients, customers, or counterparties" for purposes of determining a trading desk's RENTD under the exemption for market making-related activities, but may engage in other permitted transactions with affiliated trading desks.

K. EASING THE CONDITIONS OF THE RISK-MITIGATING HEDGING EXEMPTION

The 2019 Revisions include four significant changes to the risk-mitigating hedging exemption, which together relax the eligibility restrictions and compliance obligations for banking entities relying on the exemption:

- The Agencies have eliminated the correlation analysis requirement.
- They also have eliminated the requirement to show that a hedge "demonstrably

reduces or otherwise significantly mitigates" an identifiable risk, instead, a banking entity need only show that the hedge "may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged."

- As with the underwriting and market-making exemptions, only banking entities with significant trading assets and liabilities are required to have a compliance program under subpart D.[7]
- The Agencies have eliminated certain documentation requirements for banking entities with significant trading assets and liabilities that rely on the risk-mitigating hedging exemption.

Accordingly, as revised, banking entities with significant trading assets and liabilities are not required to comply with enhanced documentation requirements with respect to common types of hedging transactions that are listed on a pre-approved list of financial instruments and comply with pre-approved hedging limits.

L. LIBERALIZED TOTUS EXEMPTION

The 2019 Revisions also ease the conditions imposed on non-US banking entities seeking to rely on the exemption for "trading that occurs solely outside of the United States" or the "TOTUS" exemption. Specifically, the 2019 Revisions remove the requirements that (i) no financing for the banking entity's purchase or sale be provided by any US branch or affiliate of the banking entity and (ii) the purchase or sale generally not be conducted with or through any US entity.[8] Accordingly, non-US banking entities otherwise in compliance with the requirements of the TOTUS exemption may trade with and through unaffiliated US counterparties and US intermediaries (e.g., with US securities or derivatives counterparties and through US broker-dealers or US swap dealers).

The 2019 Revisions also amend the US-based personnel restriction so that it applies only to personnel engaged in the non-US banking entity's decision to purchase or sell the financial instrument and, therefore, no longer applies to (i) the non-US banking entity's personnel engaged solely in arranging, negotiating and executing trades or (ii) any personnel of the non-US banking entity's counterparty.

III. Compliance Program, Reporting and Recordkeeping

A. TAILORING OF GENERAL COMPLIANCE PROGRAM REQUIREMENTS

The 2019 Revisions revise the general compliance program requirements so that banking entities with:

i. significant trading assets and liabilities remain subject to the comprehensive compliance program requirements (including the CEO attestation requirement);
ii. moderate trading assets and liabilities are subject to a simplified compliance program requirement that does not include a CEO attestation requirement; and
iii. limited trading assets and liabilities have no compliance program requirements because they are presumed to be in compliance with the Volcker Rule.[9]

The Agencies retain the authority to require (i) a banking entity with limited trading assets and liabilities to implement a compliance program if an Agency determines, following notice and response, that the entity is engaged in prohibited proprietary trading or covered fund activity and (ii) a banking entity with limited or moderate trading assets and liabilities to comply with additional requirements if an Agency determines, following notice and response, that the size or complexity of the banking entity's trading or investment activities (or the risk of evasion) warrants doing so.

Among other impacts, this new structure has the effect of eliminating the covered fund documentation requirement for banking entities with moderate trading assets and liabilities, all of whom, under 2019 Revisions, are permitted to rely on the simplified compliance program requirement previously available to a more limited set of banking entities. This simplified compliance program generally consists of including appropriate references to Volcker Rule compliance in pre-existing policies and procedures.

B. RESTRUCTURING OF APPENDIX B ENHANCED MINIMUM STANDARDS FOR COMPLIANCE PROGRAMS

The 2019 Revisions eliminate the enhanced minimum standards for large banking entities and banking entities engaged in significant trading activities as being unnecessary in light of current compliance and risk management efforts and because banking entities may individually tailor their compliance programs to achieve the same level of compliance. The 2018 Proposal included a chart showing how the compliance program requirements would change from the current Volcker Rule, which is updated for the 2019 Revisions and reproduced as Appendix A to this update.

C. MODIFIED CEO ATTESTATION REQUIREMENT

Notwithstanding considerable criticism of the requirement that a banking entity's CEO must review and annually attest in writing that the banking entity has implemented an appropriate Volcker Rule compliance program, the 2019 Revisions retain a CEO attestation requirement for banking entities with significant trading assets and liabilities. This is a significant change from the 2018 Proposal, however, which would have required a CEO attestation for all banking entities other than those with limited trading assets and liabilities.

D. STREAMLINED METRICS REPORTING AND RECORDKEEPING REQUIREMENTS

Under the current rule, banking entities with substantial trading activity must report to the Agencies a wide range of metrics regarding proprietary trading activities. Under the 2019 Revisions (and consistent with the 2018 Proposal), only banking entities with significant trading assets and liabilities will be required to report metrics to the Agencies.

The 2018 Proposal included various revisions to the metrics, reporting and recordkeeping requirements for these largest trading banking entities. The 2019 Revisions broadly adopt the revisions from the 2018 Proposal and indicate that these changes should result in a 67 percent reduction in the number of data items and a 94 percent reduction in the total volume of data, relative to the current reporting requirements.

IV. Covered Funds

The 2018 Proposal included just a few proposed incremental adjustments to limited aspects of the covered fund regulations, coupled with extensive requests for industry comment on "all aspects" of certain elements of the covered fund rules, including most significantly the "covered fund" definition itself. Among other topics, the Agencies specifically requested comment on issues such as the Volcker Rule's treatment of securitization activities, which had already been subject to several years of extensive commentary throughout the rulemaking process as well as other forms of formal and informal dialogue between and among market participants and the Agencies.

The 2019 Revisions generally adopt the proposed incremental adjustments to limited aspects of the covered fund regulations, but defer further action on other covered fund issues to a later rulemaking. In particular, the 2019 Revisions contain no revisions to the definition of "covered fund" or the "Super 23A" prohibition but rather indicate that those items will be addressed in a future proposal.

A. RELAXATION OF RESTRICTIONS ON THE UNDERWRITING AND MARKET-MAKING EXEMPTIONS FOR CERTAIN COVERED FUND INTERESTS

The 2019 Revisions expand the ability of banking entities engaged in underwriting and market-making activities to engage in those activities with respect to ownership interests in third-party funds. Under the current regulation, a banking entity is permitted to act as an underwriter or market maker for covered fund ownership interests, provided that the banking entity includes the aggregate value of all ownership interests of a covered fund acquired or retained by the banking entity acting as underwriter or market maker in its aggregate covered fund ownership limit and subjects those interests to the capital deduction requirement. The 2019 Revisions provide that, for any covered fund that a banking entity does not organize and offer, ownership interests acquired in connection with permissible underwriting or market-making activity no longer count toward the aggregate fund limit and are not subject to the capital deduction. These limits, as well as the three-percent "per fund" limit, continue to apply to a covered fund that the banking entity organizes or offers.

B. EXPANSION OF THE RISK-MITIGATING HEDGING EXEMPTION FOR FUND-LINKED PRODUCTS

The 2019 Revisions address a longstanding issue raised under the current regulation that has precluded certain banking entities from serving in the intermediary capacity of providing clients and customers with indirect exposure to covered funds (i.e., offering fund-linked products). Specifically, the 2019 Revisions expand the risk-mitigating hedging exemption from the covered fund restrictions (which currently applies only in a very narrow context related to employee compensation arrangements) by permitting a banking entity to acquire or retain an ownership interest in a covered fund as a hedge, subject to certain compliance requirements, when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund. Unlike the proprietary trading risk-mitigating hedging exemption, the revised covered fund exemption is only applicable to transactions that accommodate specific customer requests. A banking entity may not rely on this exemption to solicit customer transactions.

C. ADJUSTMENTS TO THE SOTUS EXEMPTION

The 2019 Revisions make two minor adjustments to the "solely outside of the United States" or "SOTUS" exemption. Similar to the amendment to the TOTUS exemption, the 2019 Revisions eliminate from the SOTUS exemption the requirement that no financing for the banking entity's purchase or sale of a covered fund ownership interest is provided by any US branch or affiliate of the banking entity. In addition, the 2019 Revisions incorporate into the regulation the Agencies' February 2015 FAQ guidance regarding the scope and content of the US marketing restriction.

V. Banking Entity Status of Controlled Funds

The 2019 Revisions do not include any changes with respect to the Agencies' current approach to the banking entity status of controlled funds, which is based on a series of FAQs and no-action relief concerning registered investment companies ("RICs"), foreign public funds ("FPFs") and "foreign excluded funds."[10] Rather, the Agencies indicate that they will address this [longstanding] issue at a later date through a separate rulemaking and state that the 2019 Revisions do not "modify or revoke any previously issued staff FAQs or guidance related to RICs, FPFs, and foreign excluded funds."

VI. Conclusion

The 2019 Revisions become effective on January 1, 2020, and banking entities are required to comply with the 2019 Revisions by January 1, 2021. However, banking entities may voluntarily comply with some or all of the changes in the 2019 Revisions in 2020, prior to the compliance date.[11]

While not a wholesale revision of the Volcker Rule or a comprehensive treatment of areas previously raised by commenters, the changes in the 2019 Revisions represent a meaningful step forward in rationalizing the regulation. We expect continuing developments with respect to the Volcker Rule as the Agencies craft a covered funds proposal and implement their supervisory objectives with respect to the Volcker Rule.

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Endnotes

[1] The Agencies consist of the Federal Deposit Insurance Corporation ("FDIC"), Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Federal Reserve"), Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC").

[2] *FDIC Approves Interagency Final Rule to Simplify and Tailor the "Volcker Rule,"* (Aug. 20, 2019), *available at* https://www.fdic.gov/news/news/press/2019/pr19073.html. The Comptroller of the Currency indicated on August 20, 2019, that he had approved the 2019 Revisions on behalf of the OCC. The Federal Reserve, SEC and CFTC are expected to approve the 2019 Revisions in the coming weeks.

[3] 83 Fed. Reg. 33,432 (proposed July 17, 2018). See Mayer Brown's Legal Update on the 2018 Proposal: https://www.mayerbrown.com/en/perspectives-events/publications/2018/06/volcker-rule-revisions-proposed-by-agencies.

[4] On May 24, 2018, certain amendments were adopted to the statutory Volcker Rule as part of the Crapo Act ("Economic Growth, Regulatory Relief, and Consumer Protection Act"). Please see our Legal Update on the Crapo Act at https://www.mayerbrown.com/Congress-Passes-Regulatory-Reform-for-Financial-Institutions-05-22-2018/. The Agencies issued amendments to the current regulation to implement these legislative amendments earlier in 2019. 84 Fed. Reg. 38,115 (Aug. 6, 2019).

[5] While not set forth in the regulation, two other categories of financial institution exist in relation to the Volcker Rule: (i) financial institutions that would be banking entities but for the amendment to the definition of "banking entity" in the Economic Growth, Regulatory Relief, and Consumer Protection Act and (ii) banking entities that do not engage in proprietary trading or covered fund activities.

[6] The 2018 Proposal noted that the term "trading account" is "a statutory concept and does not necessarily refer to an actual account." It "is simply nomenclature for the set of transactions that are subject to the prohibitions on proprietary trading."

[7] As discussed below in section III.A. of this update, all banking entities with significant trading assets and liabilities are required to implement a comprehensive compliance program under subpart D.

[8] While the 2019 Revisions remove the counterparty prong that restricts purchases or sales with or through any "US entity" in what appears to be an inadvertent drafting error, the revisions do not remove the otherwise unused definition of "US entity" at _.6(e)(4).

[9] As discussed above, banking entities with limited trading assets and liabilities are not mandated to have a Volcker Rule compliance program because of the presumption of compliance. However, as a practical matter, we expect that most banking entities with limited trading assets and liabilities will implement some form of compliance program to protect against engaging in prohibited activities.

[10] The preamble to the 2019 Revisions notes that the FAQs, like all staff guidance, has no legal force or effect. This position is consistent with the 2018 Interagency Statement Clarifying the Role of Supervisory Guidance and is generally reflected in the 2019 Revisions.

[11] The Agencies indicate that early compliance is allowed subject to the Agencies' modification of the reporting system used to receive metrics reporting.

Appendix A

Summary of Changes to Compliance Program Requirements		
Requirement (Citation to 2013 Final Rule)	Banking Entities Subject to Requirement in 2013 Final Rule	Banking Entities Subject to Requirement in 2019 Revisions
6-Pillar Compliance Program **(Section __.20(b))**	Banking entities with more than $10 billion in total consolidated assets	Banking entities with significant trading assets and liabilities
Enhanced Compliance Program **(Section __.20(c), Appendix B)**	Banking entities with: • $50 billion or more in total consolidated assets or • Trading assets and liabilities of $10 billion or greater over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, if the banking entity engages in proprietary trading activity permitted under subpart B Additionally, any other banking entity notified in writing by the Agency	Not applicable. Enhanced compliance program eliminated (but see CEO Attestation Requirement below).
CEO Attestation Requirement **(Section __.20(c), Appendix B)**	Banking entities with: • $50 billion or more in total consolidated assets or • Trading assets and liabilities of $10 billion or greater over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters Additionally, any other banking entity notified in writing by the Agency	• Banking entities with significant trading assets and liabilities • Any other banking entity notified in writing by the Agency
Metrics Reporting Requirements **(Section __.20(d), Appendix A)**	• Banking entities with trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, is $10 billion or greater, if the banking entity engages in proprietary trading activity permitted under subpart B	• Banking entities with significant trading assets and liabilities • Any other banking entity notified in writing by the Agency

	• Any other banking entity notified in writing by the Agency	
Additional Covered Fund Documentation Requirements **(Section __.20(e))**	Banking entities with more than $10 billion in total consolidated assets as reported on December 31 of the previous two calendar years	Banking entities with significant trading assets and liabilities
Simplified Program for Banking Entities with No Covered Activities **(Section __.20(f)(1))**	Banking entities that do not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § __.6(a) of subpart B)	Banking entities that do not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § __.6(a) of subpart B)
Simplified Program for Banking Entities with Modest Activities **(Section __.20(f)(2))**	Banking entities with $10 billion or less in total consolidated assets as reported on December 31 of the previous two calendar years that engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § __.6(a) of subpart B)	Banking entities with moderate trading assets and liabilities
No Compliance Program Requirement Unless Agency Directs Otherwise **(N/A)**	Not applicable	Banking entities with limited trading assets and liabilities subject to the presumption of compliance