

Billing Code: 4810-25-P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Public Input for the Study Regarding the Implementation of the Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds

AGENCY: Financial Stability Oversight Council

ACTION: Notice and request for information.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) prohibits banking entities from engaging in proprietary trading and from maintaining certain relationships with hedge funds and private equity funds. These prohibitions, commonly known as the “Volcker Rule,” are contained in Section 619 of the Dodd-Frank Act. Section 619 of the Dodd-Frank Act requires the Financial Stability Oversight Council (“FSOC”) to study and make recommendations on implementing the Volcker Rule. Under Section 619, the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Board of Governors of the Federal Reserve System (“Board”), the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) must consider the recommendations of the FSOC study in developing and adopting regulations to implement the Volcker Rule. To assist the FSOC in conducting the study and formulating its recommendations, the FSOC is issuing this request for information through public comment.

DATES: Comment Due Date: **[Insert date that is 30 days after date of publication in the FEDERAL REGISTER.]**

ADDRESSES: Interested persons are invited to submit comments regarding this notice according to the instructions for “Electronic Submission of Comments” below. All submissions

must refer to the document title and one of the above docket numbers. The FSOC encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the FSOC to make them available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through the method specified above. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for inspection and downloading at www.regulations.gov.

Additional Instructions. Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for obscenities and appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 622-1703.

All responses to this Notice and Request for Information should be submitted via www.regulations.gov to ensure consideration.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.¹ Under section 619 of the Dodd-Frank Act, banking entities² are prohibited from engaging in proprietary trading and from maintaining certain relationships with hedge funds and private equity funds. These prohibitions and other provisions of section 619 are commonly known, and referred to herein, as the “Volcker Rule.” Section 619 of the Dodd-Frank Act requires the FSOC to study and make recommendations on implementing the Volcker Rule. Under Section 619, the OCC, the Board, the FDIC, the SEC and the CFTC must consider the findings of the FSOC study in developing and adopting regulations to carry out the Volcker Rule.

Section 619(b) provides certain specific guidance with respect to the FSOC study and recommendations, stating as follows:

“(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

“(A) promote and enhance the safety and soundness of banking entities;

“(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010).

² The term “banking entity” is defined in section 13(h)(1) of the Bank Holding Company Act, as amended by section 619 of the Dodd-Frank Act. The term generally means any insured depository institution, any company that controls an insured depository institution, any company that is treated as a bank holding company for the purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity.

“(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

“(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

“(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

“(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

“(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).”

II. Solicitation for Comments on the Volcker Rule Study

To assist the FSOC in conducting the study and formulating its recommendations concerning the Volcker Rule, the FSOC seeks public comment on the following questions:

1. Commenters are invited to submit views on ways in which the implementation of the Volcker Rule can best serve to:
 - (i) Promote and enhance the safety and soundness of banking entities;
 - (ii) Protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;
 - (iii) Limit the inappropriate transfer of federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the federal government to unregulated entities;

- (iv) Reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board³, and the interests of the customers of such entities and companies;
 - (v) Limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;
 - (vi) Appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and
 - (vii) Appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under the Volcker Rule.
2. What are the key factors and considerations that should be taken into account in making recommendations on implementing the proprietary trading provisions of the Volcker Rule?
 3. What are the key factors and considerations that should be taken into account in making recommendations on implementing the provisions of the Volcker Rule that restrict the

³ The term “nonbank financial companies supervised by the Board” refers to those nonbank financial companies that may be designated by the FSOC under section 113 of the Act to be supervised by the Board and subject to enhanced prudential standards.

ability of banking entities to invest in, sponsor or have certain other covered relationships with private equity and hedge funds?

4. With respect to proprietary trading and hedge fund and private equity fund activities,

what factors and considerations should inform decisions on the definitions of:

- (i) “Banking entity” [§619(h)(1)];
- (ii) “Hedge fund” [§619(h)(2)];
- (iii) “Private equity fund” [§619(h)(2)];
- (iv) “Such similar funds” [§619(h)(2)];
- (v) “Proprietary trading” [§619(h)(4)];
- (vi) “Sponsor” [§619(h)(5)];
- (vii) “Trading account” [§619(h)(6)];
- (viii) “Short term” [§619(h)(6)];
- (ix) “Illiquid fund” [§619(h)(7)];
- (x) A transaction “in connection with underwriting or market making related activities...designed not to exceed the reasonably expected near-term demands of clients, customers or counterparties” [§619(d)(1)(B)];
- (xi) “Risk-mitigating hedging activities” [§619(d)(1)(C)];
- (xii) “The purchase, sale, acquisition, disposition of securities or other instruments ‘on behalf of customers’” [§619(d)(1)(D)];
- (xiii) Investments in “small business investment companies” and certain “public welfare” investments [§619(d)(1)(E)];
- (xiv) A permitted activity by an insurance company [§619(d)(1)(F)]; and

- (xv) Such other activities as “would promote and protect the safety and soundness of banking entities and the financial stability of the United States” [§619(d)(1)(J)];?
5. With respect to proprietary trading and hedge fund and private equity fund activities, what factors and considerations should be taken into account as indicative that a transaction, class of transactions or activity:
- (i) Would involve or result in a material conflict of interest between a banking entity (or a nonbank financial company supervised by the Board) and its clients, customers or counterparties;
 - (ii) Would result, directly or indirectly, in a material exposure by a banking entity (or a nonbank financial company supervised by the Board) to high-risk assets or high-risk trading strategies; or
 - (iii) Would pose a threat to the safety and soundness of a banking entity (or a nonbank financial company supervised by the Board)?
6. What factors and considerations should be taken into account in making recommendations on whether additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities or nonbank financial companies supervised by the Board engaged in activities permitted under the Volcker Rule?
7. With respect to proprietary trading and hedge fund and private equity fund activities, which practices, types of transactions or corporate structures in general have historically accounted for or involved increased risks or may account for or involve increased risks in the future?

8. With respect to proprietary trading and hedge fund and private equity fund activities, what practices, policies or procedures have historically been utilized that may have mitigated or exacerbated risks or losses? What practices, policies or procedures might be useful in limiting undue risk or loss in the future?
9. What factors and considerations should be taken into account in making recommendations to safeguard against evasion of the Volcker Rule?
10. How should the international context be considered when implementing the Volcker Rule? Are there any factors or considerations that should be taken into account regarding the application of the Volcker Rule to banking entities or nonbank financial companies that operate outside the United States? What issues does implementation of the Volcker Rule present with respect to the following:
 - (i) Domestic banking entities that have access to foreign exchanges,
 - (ii) foreign affiliates of domestic banking entities, and
 - (iii) foreign non-bank financial companies
11. What timing issues are raised in connection with the divestiture of illiquid assets affected by the prohibitions of the Volcker Rule, and how might such issues be appropriately addressed?
12. Commenters are generally invited to submit views with respect to any qualitative or quantitative factors that should be considered in connection with the Council's study of the Volcker Rule, as well as any analogous areas of law, economics, or industry practice, and any factors specific to the commenter's experience. Please comment generally and

specifically, and please include empirical data and other information in support of such comments, where appropriate and available.

Alastair Fitzpayne
Deputy Chief of Staff and Executive Secretary,
Department of the Treasury

Dated: October 1, 2010

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