

The Volcker Rule: Haste Makes Waste or Need For Speed?

Although many portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) are controversial, few provisions have drawn as much debate as the Volcker Rule.¹ Briefly, the Volcker Rule places significant restrictions on banking entities’ and nonbank financial companies’ proprietary trading and ownership of hedge and private equity funds. On October 12, 2011, four of the five financial industry regulators² proposed complex and detailed regulations to implement the Volcker Rule.³ These regulations spanned 127 pages of the Federal Register and contained nearly 400 separate requests for comment (most of which included multiple questions) (the “Joint Proposed Rules”). The Commodity Futures Trading Commission (“CFTC”) has yet to release proposed Volcker Rule regulations, but CFTC Chairman Gary Gensler stated last week that “I would envision that we would move forward with a rule similar to what other regulators have done.”⁴

The Joint Proposed Rules state that “[c]omments should be received on or before January 13, 2012,” a deadline that many in the financial services industry believe is too short. On November 30, 2011, several financial industry trade associations sent a letter to the regulators requesting that the comment period be extended “to the later of 90 days after the current deadline of January 13th or to 60 days after the CFTC releases its proposed regulations,” due to the complexity and importance of the regulations.⁵

Several high-ranking Republican members of the House Financial Services Committee followed suit on December 7, 2011, writing that “[t]he implementation of the Volcker Rule is too important an issue to rush” and “we believe your agencies should extend the comment period by at least 30 days.”⁶ The Financial Services Committee letter also calls the regulators to testify at a hearing regarding the Volcker Rule on January 18, 2012 (five days after the current comment period on the Joint Proposed Rules closes).

Even the Volcker Rule’s namesake, former Federal Reserve Chairman Paul Volcker, has said that the Joint Proposed Rules are “much more complicated than I would like to see.”⁷

Consumer advocates, however, have contended the Volcker Rule’s implementing regulations cannot be finalized quickly enough. For example, on December 9, 2011, financial reform group Better Markets urged regulators to “proceed with your rulemaking process as scheduled,” stating that “[t]he industry’s relentless effort to derail or delay this rule must be rejected.”⁸

According to Paul Volcker, the policy behind the Volcker Rule is simple enough – “I don’t want banks doing the kinds of things they were doing.”⁹ Concerns about maintaining market liquidity and preserving financial institutions’ ability to function as market makers, however, have turned implementation of the Volcker Rule into a fierce battleground. When these concerns are coupled with the complexity of the Joint Proposed Rules, financial industry regulators now find themselves challenged by the delicate balancing act involved in setting a feasible timeframe for finalizing

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those rules.

We will continue to monitor developments regarding the Volcker Rule implementation, and will provide updates when available.

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¹ Dodd-Frank Act, 111th Cong. § 619 (2010).

² The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (the "Regulators").

³ Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 76 Fed. Reg. 68,846 (proposed Oct. 12, 2011, published Nov. 7, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-07/pdf/2011-27184.pdf>.

⁴ *Continued Oversight of the Implementation of the Wall Street Reform Act: Hearing Before the Committee on Banking, Housing and Urban Affairs*, 112th Cong. (2011) (statement of Gary Gensler, Chairman, CFTC), available at http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.LiveStream&Hearing_id=77971a67-b8f7-4e14-a837-892a065b7201.

⁵ Letter from American Bankers Association, Financial Services Forum, Financial Services Roundtable, Institute of International Bankers, and Securities Industry and Financial Markets Association to the Regulators (Nov. 30, 2011), available at <http://www.sifma.org/workarea/downloadasset.aspx?id=8589936618>.

⁶ Letter from Spencer Bachus, Jeb Hensarling, Shelley Moore Capito and Scott Garrett to the Regulators and the CFTC (Dec. 7, 2011), available at [http://www.sifma.org/uploadedfiles/issues/regulatory_reform/volcker_rules/hfsc%20letter%20to%20regulators%20re%20volcker%20rule%20\(07-dec-2011\).pdf](http://www.sifma.org/uploadedfiles/issues/regulatory_reform/volcker_rules/hfsc%20letter%20to%20regulators%20re%20volcker%20rule%20(07-dec-2011).pdf).

⁷ Rachel Armstrong, *Paul Volcker Says Volcker Rule Too Complicated*, Reuters, Nov. 9, 2011, available at <http://www.reuters.com/article/2011/11/09/us-regulation-volcker-idUSTRE7A83KN20111109>.

⁸ Letter from Dennis M. Kelleher to the Regulators (Dec. 9, 2011), available at <http://www.bettermarkets.com/sites/default/files/Regulator%20Ltr%20re%20Volcker%20Delay%20Req%2012-9-11.pdf>.

⁹ Armstrong, *supra* note 7.