> Final Volcker Rule Regulations: Effects on Non-U.S. Entities

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BINGHAM

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On December 10, 2013, the U.S. federal banking agencies,[1] the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission (the "CFTC," and, together with the federal banking agencies and the SEC, the "Agencies") jointly adopted regulations (the "Final Regulations") to implement Section 619 of the Dodd-Frank Act, commonly known as the Volcker Rule.[2] The Final Regulations were adopted more than two years after proposed regulations to implement the Volcker Rule (the "Proposed Regulations") were first published.[3]

The Volcker Rule prohibits any "banking entity," as defined in the Final Regulations, from (i) engaging in proprietary trading and (ii) acquiring and retaining an ownership interest in, sponsoring or having certain relationships with hedge funds, private equity funds and certain other private funds ("covered funds"), subject to certain exemptions.

In this Alert, we discuss the Volcker Rule's impact on non-U.S. organizations that are subject to the Volcker Rule because the non-U.S. organization or an affiliate conducts banking operations in the United States, such as through a U.S. bank branch or a U.S. bank subsidiary.[4] As discussed below, such non-U.S. organizations, and their U.S. and non-U.S. affiliates and subsidiaries, generally must comply with the Volcker Rule's restrictions on proprietary trading and covered fund activities. Therefore, it is critical to understand how the Agencies have addressed U.S. and non-U.S. activities, and the parameters of permitted activities, with respect to non-U.S. institutions. With such understanding, organizations with entities subject to the Volcker Rule should consider and implement changes in order to minimize the overall impact of the Final Regulations to their U.S. and non-U.S. operations and activities.

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[1] The U.S. federal banking agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (the "FRB"), and the Federal Deposit Insurance Corporation (the "FDIC").

[2] The Final Regulations and accompanying statements, fact sheets, and related documents can be found on the websites of the Agencies. For example, they are available on the FRB's website at http://www.federalreserve.gov/newsevents/press/bcreg/20131210a.htm.

[3] For a summary of the Proposed Regulations, *see* Bingham McCutchen LLP Legal Alert: Proposed Volcker Rule Regulations: A Summary (Oct. 18, 2011). The Proposed Regulations can be found in the Federal Register at 76 FR 68846 (Nov. 7, 2011) and on the FRB's website at http://www.federalreserve.gov/newsevents/press/bcreg/20111011a.htm.

[4] For a summary of some of the key highlights of the Final Regulations, *see* Bingham McCutchen LLP Legal Alert: Regulators Adopt Final Volcker Rule Regulations (Dec. 11, 2013). For detailed summaries of the Final Regulations' requirements as applied to all banking entities (including U.S. and non-U.S. banking entities), *see* the following Bingham McCutchen LLP Legal Alerts: Final Volcker Rule Regulations: Restrictions on Covered Fund Activities and Investments (Jan. 6, 2014); Final Volcker Rule Regulations: Restrictions on Proprietary Trading (Jan, 9, 2014); and Final Volcker Rule Regulations: Securitizations and Other Structured Transactions (Updated Jan. 16, 2014).

I. Application of the Volcker Rule to Non-U.S. Entities

The prohibitions of the Volcker Rule apply to "banking entities." The Final Regulations define a "banking entity" as any of the following:

- Any U.S. insured depository institution (other than certain limited purpose trust institutions);
- Any company that controls a U.S. insured depository institution;
- Any company treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978; and
- Any affiliate or subsidiary of any of the foregoing (as defined in the Bank Holding Company Act of 1956 (the "BHC Act")).[5]

Under this definition, non-U.S. companies with banking operations in the United States (and their affiliates and subsidiaries) are generally subject to the Volcker Rule, whether or not they themselves engage in activities that are banking in nature.

- The Final Regulations apply to any non-U.S. company that is or controls a non-U.S. bank that has a branch or agency in the United States, controls a commercial lending company in the United States, controls a U.S. bank or bank holding company, or controls any other type of insured depository institution in the United States (*e.g.*, a savings bank or industrial bank).[6]
- The Final Regulations also apply to the U.S. and non-U.S. subsidiaries and affiliates of such non-U.S. companies.[7]

The Volcker Rule also applies to any non-U.S. affiliate or subsidiary of a U.S. bank or bank holding company (or other U.S. depository institution or depository institution holding company).

U.S. and non-U.S. firms that are not themselves banking entities can also be impacted by the Volcker Rule. For example, a non-U.S. asset manager that manages a fund in which a U.S. or non-U.S. banking entity has invested may be impacted by the investing banking entity's need to comply with the Volcker Rule. Such banking entity investors may be required to divest their interests in such funds or request that such funds be restructured.

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[5] Final Regulations §__.2(c)(1). "Affiliate" and "subsidiary" are defined by reference to the definitions of those terms in Sections 2(k) and 2(d) of the BHC Act, respectively. 12 U.S.C. §§ 1841(k) and (d). A company is a "subsidiary" of a banking entity if the banking entity owns, controls, or has the power to vote 25% or more of the voting shares of the company; has control over the election of a majority of the company's directors; or otherwise has the power, directly or indirectly, to exercise a controlling influence over the management or policies of the company. 12 U.S.C. § 1841(d). A company is an "affiliate" of a banking entity if the company controls, is controlled by, or is under common control with the banking entity. 12 U.S.C. § 1841(k).

[6] *See* 12 U.S.C. § 3106.

[7] Final Regulations § __.2(c)(1)(iv).

II. Volcker Rule Requirements Generally

All banking entities, including both U.S. and non-U.S. banking entities, may engage in proprietary trading or covered fund activities only as permitted under the Final Regulations. A non-U.S. banking entity may engage in such activities if the activity meets the requirements of any of the Final Regulations' permitted activities exemptions available to all banking entities. For example, the Final Regulations permit any banking entity (U.S. or non-U.S.) to engage in proprietary trading that complies with the Final Regulations' requirements for market making or underwriting. With respect to covered funds, any banking entity (U.S. or non-U.S.) may organize and offer a covered fund, and make a seeding or de minimis investment in that covered fund, under the exemptions for such activities in the Final Regulations.

In addition, to limit the extraterritorial application of the Volcker Rule's restrictions on proprietary trading and covered fund ownership and sponsorship, while attempting to preserve national treatment and competitive equality among U.S. and non-U.S. firms within the United States, the Volcker Rule provides exemptions that permit non-U.S. banking entities to engage in certain otherwise prohibited proprietary trading and fund activity outside the United States. These exemptions are available to non-U.S. banking entities that meet the requirements of the exemptions, but not to any U.S. banking entity or to any non-U.S. banking entity that is controlled by a U.S. banking entity.

The Final Regulations also provide certain other exclusions and exemptions that are relevant to non-U.S. banking entities. For example, the Final Regulations provide an exemption for certain permitted trading in non-U.S. government obligations. The Final Regulations' definition of covered fund includes special provisions for non-U.S. funds (but which apply more narrowly to non-U.S. funds than had been proposed). In addition, there is an exclusion from the definition of covered fund for certain "foreign public funds" that are similar to U.S. registered investment companies. We discuss these exclusions and exemptions in greater detail below.

III. Proprietary Trading Activities

The Volcker Rule prohibition on proprietary trading is, on its face, quite simple: it bans a banking entity from engaging as principal for the trading account of the banking entity in any transaction to purchase or sell, or otherwise acquire or dispose of, a security, derivative, contract of sale of a commodity for future delivery, or other financial instrument that the Agencies include by rule.[8] This ban, however, combined with the sweeping definition of banking entity, requires that financial institutions and their affiliates around the world evaluate current activities, and potentially revisit contemplated activities, in order to ensure compliance upon the effective date of the Final Regulations. The proprietary trading prohibition applies to any U.S. or non-U.S. banking entity that is subject to the Volcker Rule, absent an exemption, exception or exclusion.

[8] *See* 12 U.S.C.1851(h)(4).

A. Proprietary Trading Defined

I. Proprietary Trading in a Trading Account

The Final Regulations specify that a banking entity may not trade financial instruments as principal for a trading account. "A "trading account" is defined as "any account that is used by a banking entity" to engage in one or more of three enumerated types of activities:

- Purchase[s or sales of] one or more financial instruments principally for the purpose of... short-term resale;... [b]enefitting from actual or expected short-term price movements; . . . [r]ealizing short-term arbitrage profits; or... [h]edging one or more positions resulting from the purchases or sales of [certain] financial instruments ....;
- Purchase[s or sales of] one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; ***or***
- Purchase[s or sales of] one or more financial instruments for any purpose, if the banking entity... [i]s licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or...[i]s engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business.[9]

The definition of "trading account" also includes a rebuttable presumption that purchases and sales of financial instruments by a banking entity shall be deemed for the banking entity's trading account if certain conditions are met.[10]

2. Rebuttable Presumption of Proprietary Trading

The Final Regulations include a "rebuttable presumption" that a banking entity is engaged in short-term trading if it "holds [a] financial instrument for *fewer than sixty days* or substantially transfers the risk of the financial instrument within sixty days of purchase (or sale)."[11] To rebut the presumption, a banking entity must "demonstrate, based on all relevant facts and circumstances,

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[9] Final Regulations § __.3(b)(1).

[10] Final Regulations § __.3(b)(2). The Final Regulations also include numerous defined terms. Some of these terms are used specifically with regard to permitted market making and underwriting, and other terms are used throughout the Final Regulations. For these definitions, please refer to Appendix A to Bingham McCutchen LLP Legal Alert: Final Volcker Rule Regulations: Restrictions on Proprietary Trading.

[11] Final Regulations § __.3(b)(2) (emphasis added).

that [it] did not purchase (or sell) the financial instrument principally for the purpose of" prohibited short-term trading (described above).[12]

3. "Financial Instrument"

As noted above, banking entities are prohibited from engaging in proprietary trading in "financial instruments." The definition of "financial instrument" in the Final Regulations is:

- A security, including an option on a security;
- A derivative, including an option on a derivative; or
- A contract of sale of a commodity for future delivery, or option on a contract of sale of a commodity for future delivery.[13]

The Final Regulations specify, however, that "financial instrument" does not include:

- A loan;[14]
- A commodity that is not:
  - an excluded commodity (other than foreign exchange or currency);[15]
  - a derivative;
  - a contract of sale of a commodity for future delivery; or
  - an option on a contract of sale of a commodity for future delivery; or
- Foreign exchange or currency.[16]

4. Exclusions to Proprietary Trading

The Final Regulations include express exclusions from "proprietary trading" for activities that the Agencies do not believe are proprietary trading as defined by the statute or Final Regulations and

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[12] *Id.*

[13] Final Regulations § __.3(c)(1).

[14] A "loan" is defined in the Final Regulations as "any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative." Final Regulations § __.2(s).

[15] An excluded commodity is defined to have the same meaning as in section 1a(19) of the Commodity Exchange Act. *See* preamble to the Final Regulations (the "Preamble") at 53. Generally, an excluded commodity under that definition is any financial instrument such as a security, currency, interest rate, debt instrument, credit rating; any economic or commercial index other than a narrow-based commodity index; or any other value that is out of control of participants and is associated with an economic consequence.

[16] Final Regulations § __.3(c)(2). However, foreign exchange swaps and forwards are financial instruments because the Agencies believe those instruments appear to be, or operate in economic substance, as derivatives. *See* Preamble, at 53-54.

therefore are not prohibited activities under the Volcker Rule.[17] The categories of excluded transactions include purchases or sales of securities that arise under certain repurchase and reverse repurchase agreements and securities lending agreements; purchases or sales of securities for *bona fide* liquidity management purposes; or purchases or sales of securities by a banking entity acting solely as broker, agent, or custodian. In addition, activities such as acting as a riskless principal or fiduciary are excluded from the prohibition on proprietary trading. Each of these exclusions is subject to specific requirements in the Final Regulations.

B. Permitted Proprietary Trading Activities "Solely Outside the United States"

The Final Regulations provide an exemption that permits non-U.S. banking entities to engage in otherwise prohibited proprietary trading outside the United States. This exemption is available only to non-U.S. banking entities that meet the requirements of the exemption, *and not to U.S. banking entities and their subsidiaries*. Non-U.S. banking entities may also rely on any of the other exemptions available to all U.S. and non-U.S. banking entities, provided the applicable requirements are met. (These exemptions are described in Bingham McCutchen LLP Legal Alert: Final Volcker Rule Regulations: Restrictions on Proprietary Trading)

1. Banking Entities Eligible to Rely on the Exemption

The Final Regulations permit proprietary trading outside the United States by a non-U.S. banking entity if:

- The non-U.S. banking entity that acts as principal in the transaction is not organized or directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of any State;[18] and
- The non-U.S. purchase or sale by the banking entity is made pursuant to Section 4(c)(9) or 4(c)(13) of the BHC Act.[19]

An activity or investment by the banking entity is pursuant to Section 4(c)(9) or 4(c)(13) of the BHC Act only if:

- The activity or investment is conducted in accordance with the requirements of this exemption for non-U.S. trading activities;[20] and
- With respect to a banking entity that is a "foreign banking organization,"[21] the banking entity meets the requirements to be a qualifying foreign banking organization ("QFBO") under the FRB's Regulation K;[22] or

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[17] Preamble at 55-56.
[18] Final Regulations § __.6(e)(1)(i).
[19] Final Regulations § __.6(e)(1)(ii).
[20] Final Regulations § __.6(e)(2)(i).

- With respect to a banking entity that is not a "foreign banking organization" (*e.g.,* a non-U.S. entity which is a banking entity solely because it controls a U.S. savings bank or industrial bank), the banking entity is not organized under the laws of the United States or one or more States and meets at least two of the following:
  - Total assets of the banking entity held outside the United States exceed total assets of the banking entity held in the United States;[23]
  - Total revenues derived from the business of the banking entity outside of the United States exceed total revenues derived from the business of the banking entity in the United States;[24] or
  - Total net income derived from the business of the banking entity outside of the United States exceeds total net income derived from the business of the banking entity in the United States.[25]

2. Proprietary Trading Outside the United States

In addition, for proprietary trading activities to be permissible under this exemption, all of the following criteria must be satisfied:

- The entity that acts as the principal in the transaction must not be located in the United States or organized under U.S. law;[26]
- The entity that decides whether to enter the transaction must not be located in the United States or organized under U.S. law;[27]
- The transaction must not be accounted for as a principal transaction – either directly or on a consolidated basis – by any branch or affiliate that is located in the United States or organized under U.S. law;[28]

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[21] "Foreign banking organization" is defined by reference to § 211.21(o) of the FRB's Regulation K (12 C.F.R. § 211.21(o)), which defines "foreign banking organization" as (1) a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) that (i) operates a branch, agency, or commercial lending company in the United States; controls a bank in the United States; or (iii) or controls an Edge corporation acquired after March 5, 1987; and (2) any company of which such a foreign bank is a subsidiary. However, the Volcker Rule definition of "foreign banking organization" excludes a foreign bank that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Marianas Islands. Final Regulations § ___.2(n); 12 C.F.R. § 211.21(o).

[22] Final Regulations § __.6(e)(2)(ii)(A).

[23] Final Regulations § __.6(e)(2)(ii)(B)(1).

[24] Final Regulations § __.6(e)(2)(ii)(B)(2).

[25] Final Regulations § __.6(e)(2)(ii)(B)(3).

[26] Final Regulations § __.6(e)(3)(i).

[27] Final Regulations § __.6(e)(3)(ii).

[28] Final Regulations § __.6(e)(3)(iii).

- No financing for the transaction may be provided – either directly or indirectly – by any branch or affiliate that is located in the United States or organized under U.S. law;[29] and
- The transaction must not be conducted with or through any U.S. entity, unless the transaction falls into one of the following categories:[30]
  - The purchase or sale of a U.S. entity's non-U.S. operations, where none of the representatives for the U.S. entity who are involved in the transaction are actually located in the United States;[31]
  - A transaction where an unaffiliated market intermediary (*i.e.*, a registered broker, dealer, or futures commission merchant) is acting as principal, and where the transaction is promptly cleared and settled via a clearing agency acting as a central counterparty;[32] or
  - An anonymous transaction on an exchange or similar facility via an unaffiliated market intermediary (*i.e.*, a registered broker, dealer, or futures commission merchant).[33]

For the purposes of this exemption, a non-U.S. banking entity that has branches, agents, or subsidiaries in the U.S. is not considered a U.S. entity. However, a non-U.S. entity that is controlled by or acting on behalf of a U.S. entity will be treated as a U.S. entity for the purposes of this analysis.[34]

C. Permitted Trading in Non-U.S. Government Obligations

As a result of extensive advocacy by non-U.S. governments and non-U.S. financial institutions that are "banking entities" as defined in the Volcker Rule, the Final Regulations permit some proprietary trading in financial instruments issued or guaranteed by a non-U.S. sovereign, or by an agency or political subdivision of a non-U.S. sovereign by banking entities, both in the United States and by non-U.S. banking entities, as well as proprietary trading in domestic (e.g., U.S.) government obligations. This is in contrast to the Proposed Regulations, which only permitted proprietary trading in domestic (i.e., U.S.) government obligations.

1. U.S. affiliates of non-U.S. banking entities.[35]

A U.S. banking entity that is not an insured depository institution, and that is directly or indirectly controlled by a banking entity organized under the laws of a non-U.S. sovereign, may engage in proprietary trading of obligations issued or guaranteed by (i) that specific non-U.S. sovereign, (ii) a political subdivision of that sovereign; (iii) an agency of that sovereign; or (iv) a multinational

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[29] Final Regulations § __.6(e)(3)(iv).
[30] Final Regulations § __.6(e)(3)(v).
[31] Final Regulations § __.6(e)(3)(v)(A).
[32] Final Regulations § __.6(e)(3)(v)(B).
[33] Final Regulations § __.6(e)(3)(v)(C).
[34] Final Regulations § __.6(e)(5).
[35] Final Regulations § __.6(b)(1).

central bank of which that non-U.S. sovereign is a member.[36] This exemption will not apply if the non-U.S. entity that controls the U.S. banking entity is itself ultimately controlled by another U.S. banking entity.[37]

2. Non-U.S. affiliates of U.S. banking entities.[38]

A non-U.S. entity that is owned or controlled by a U.S. banking entity, and that is either recognized as a foreign bank by the FDIC or is regulated as a securities dealer in its home country,[39] may engage in proprietary trading of obligations issued or guaranteed by (i) the non-U.S. sovereign of the country in which it is organized, (ii) a political subdivision of that sovereign; (iii) an agency of that sovereign; or (iv) a multinational central bank of which that non-U.S. sovereign is a member.[40] This exemption will only apply if the government obligation in question is owned by the non-U.S. entity – not the U.S. affiliate – and the U.S. affiliate is not financing the transaction.[41]

IV. Covered Fund Activities

Under the Final Regulations, a banking entity (U.S. or non-U.S.) may not, as principal, directly or indirectly, acquire or retain any ownership interest in or sponsor a covered fund, except as permitted under the Volcker Rule's permitted activities exemptions. The covered fund provisions of the Final Regulations also impose other limitations on covered fund activities and investments, including the so-called "Super 23A" restrictions on relationships by banking entities with covered funds.

While the restrictions on covered fund activities apply to all U.S. and non-U.S. banking entities, there are certain exemptions available to non-U.S. banking entities that are not available to U.S. banking entities, as discussed below. In addition, certain categories of non-U.S. funds are excluded from the Final Regulations' definition of covered funds.

A. Covered Funds

1. Covered Fund Definition

The Final Regulations define a "covered fund" to include the following, subject to certain exclusions:

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[36] Final Regulations § __.6(b)(1)(i)-(ii).
[37] Final Regulations § __.6(b)(1)(iii).
[38] Final Regulations § __.6(b)(2).
[39] Final Regulations § __.6(b)(2)(i).
[40] Final Regulations § __.6(b)(2)(ii).
[41] Final Regulations § __.6(b)(2)(iii).

- An issuer that would be an investment company, as defined in the Investment Company Act of 1940 (the "Investment Company Act"), but for section 3(c)(1) or 3(c)(7) of that Act;[42]
- Certain commodity pools;[43] and
- Certain non-U.S. funds, but only with respect to a U.S. banking entity or a banking entity controlled by a U.S. banking entity.[44]

2. Classification of Non-U.S. Funds as Covered Funds

In the Final Regulations, the Agencies narrowed the categories of non-U.S. funds that are covered funds from the potentially broad scope of non-U.S. funds that would have been covered funds under the Proposed Regulations.[45] The covered fund definition includes, but only for any banking entity that is, or is controlled directly or indirectly by a banking entity that is, located or organized under the laws of the United States or of any State,[46] an entity that:

- Is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States;
- Is, or holds itself out as being, an entity or arrangement that raises money primarily for investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities; and
- Has as its sponsor that banking entity (or an affiliate thereof) or has issued an ownership interest that is owned directly or indirectly by that banking entity (or an affiliate thereof).[47]

Under this definition, a non-U.S. fund becomes a covered fund only with respect to the U.S. banking entity (or non-U.S. banking entity that is controlled by a U.S. banking entity) that acts as a

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[42] Final Regulations § __.10(b)(1)(i). Most hedge funds and private equity funds that are offered in the United States rely on either section 3(c)(1) (generally, a fund with 100 or fewer security holders) or section 3(c)(7) (generally, a fund whose investors are natural persons with at least $5 million in investments or entities with at least $25 million in investments) for exclusion from the definition of "investment company" under the Investment Company Act.

[43] Final Regulations § __.10(b)(1)(ii).

[44] Final Regulations § __.10(b)(1)(iii).

[45] Under the Proposed Regulations, a non-U.S. fund would have been a covered fund for any banking entity (U.S. or non-U.S.) if the non-U.S. fund were an issuer, as defined in section 2(a)(22) of the Investment Company Act, that would be a covered fund as otherwise defined in the Proposed Regulations, were it organized or offered under the laws, or offered to one or more residents of the United States or of one or more States.

[46] For these purposes, a U.S. branch, agency, or subsidiary of a non-U.S. banking entity is located in the United States; however, the non-U.S. bank that operates or controls that branch, agency or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency or subsidiary. *See* Final Regulations § __.10(b)(1)(iii)(C)(3).

[47] Final Regulations § __.10(b)(1)(iii).

sponsor to the non-U.S. fund or has an ownership interest in the non-U.S. fund.[48] Thus, a non-U.S. fund may be a covered fund with respect to the U.S. banking entity that sponsors the fund, but the same non-U.S. fund may not be a covered fund with respect to a non-U.S. banking entity that invests in the fund solely outside the United States.[49] Also, a non-U.S. banking entity that is not controlled by a U.S. banking entity is not under any Volcker Rule restriction with respect to such a non-U.S. fund, unless the foreign fund would be a covered fund under another prong of the definition of covered fund.[50]

The Agencies noted, however, that any non-U.S. fund, including a non-U.S. fund sponsored or owned by a non-U.S. banking entity, that is offered or sold in the United States in reliance on the exclusions in section 3(c)(1) or section 3(c)(7) of the Investment Company Act would be a covered fund, unless it meets the requirements of one or more of the exclusions from the definition of covered fund (such as those discussed below).[51] In addition, a non-U.S. banking entity may be able to rely on the Final Regulations' non-U.S. fund exemption to sponsor or invest in a non-U.S. fund which is a covered fund, if, among other things, no ownership interest in the fund is offered or sold to a resident of the United States.[52]

3. Exclusions for Foreign Public Funds and Certain Other Non-U.S. Funds

The Final Regulations exclude certain categories of entities from the definition of covered fund. The excluded categories include, for example, wholly-owned subsidiaries, certain joint ventures, certain acquisition vehicles, certain insurance company separate accounts, certain loan securitizations, and U.S. registered investment companies. The Final Regulations also provide exclusions that are available specifically for certain types of foreign funds, as discussed below.

a) Foreign Public Funds

The Agencies provided an exclusion from the definition of covered fund for foreign public funds in the Final Regulations to address commenters' concerns that the Volcker Rule's prohibitions would be applied to non-U.S. funds that are similar to U.S. registered investment companies.[53] The exclusion applies to any issuer that:

- is organized or established outside of the United States;
- is authorized to offer and sell ownership interests to retail investors in the issuer's home jurisdiction; and

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[48] *See* Preamble at 484.

[49] *Id.*

[50] *Id.*

[51] *See* Preamble at 485.

[52] *See* Preamble at 621.

[53] *See* Preamble at 486.

- sells ownership interests predominantly through one or more public offerings outside of the United States.[54]

For these purposes, the term "public offering" means a distribution (as defined for purposes of the Final Regulations exemption for permitted underwriting activities)[55] of securities in a jurisdiction outside the United States to investors, including retail investors, provided that:

- the distribution complies with all applicable requirements in the jurisdiction in which such distribution is made;
- the distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and
- the issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.[56]

The Agencies explained in the Preamble that a public offering is "predominantly outside the United States" if 85 percent or more of the fund's interests are sold to investors who are not residents of the United States.[57]

b) Foreign Pension and Retirement Funds

The Final Regulations also provide an exclusion from the definition of covered fund for certain foreign pension and retirement funds. This exclusion is available for a plan, fund, or program providing pension, retirement, or similar benefits that is:

- organized and administered outside the United States;
- a broad-based plan for employees or citizens that is subject to regulation as a pension, retirement, or similar plan under the laws of the jurisdiction in which the plan, fund, or program is organized and administered; and
- established for the benefit of citizens or residents of one or more non-U.S. sovereigns or any political subdivision thereof.[58]

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[54] Final Regulations § __.10(c)(1)(i). For a banking entity that is located in or organized under the laws of the United States or any State (or a banking entity controlled by such a banking entity), this exclusion is available only with respect to a non-U.S. fund sponsored by the U.S. banking entity (or banking entity controlled by a U.S. banking entity) if, in addition to these requirements, the fund's ownership interests are sold predominantly to persons other than the sponsoring banking entity; the issuer; affiliates of such sponsoring banking entity or such issuer; and employees and directors of such entities. *See* Preamble at 504.

[55] *See* Final Regulations § ___.4(a)(3).

[56] Final Regulations § __.10(c)(1)(iii).

[57] *See* Preamble at 505.

[58] Final Regulations § ___.10(c)(5).

The purpose of this exclusion is to allow such funds to be treated similarly to U.S. pension funds which are not covered funds by virtue of the exclusion for certain broad-based employee benefit plans under section 3(c)(11) of the Investment Company Act.[59]

c) Qualifying Covered Bonds

Qualifying covered bond structures are excluded from the definition of "covered fund." To qualify for the exemption, an entity must own or hold a dynamic or fixed asset pool consisting solely of loans and other assets (the "cover pool") that would be permissible in an exempt loan securitization, for the benefit of the holders of "covered bonds."[60]

A "covered bond" is defined as:

- a debt obligation issued by a foreign banking organization, the payment obligations of which are fully and unconditionally guaranteed by the entity that owns the cover pool; or
- a debt obligation of the entity that owns the cover pool, if the payment obligations are fully and unconditionally guaranteed by a foreign banking organization and the entity that owns the cover pool is a wholly-owned subsidiary of such foreign banking organization.[61]

B. Definitions of "Ownership Interest" and "Sponsor"

1. "Ownership Interest"

An "ownership interest" in a covered fund is any equity, partnership, or other similar interest.[62] The Final Regulations provide a list of rights that would constitute an "other similar interest."[63] "Restricted profit interests," characterized as "carried interests" in the Proposed Regulations, are carved out from the definition of "ownership interest."[64]

2. "Sponsor"

A banking entity is a "sponsor" of a covered fund if the banking entity:

- Serves as a general partner, managing member, trustee,[65] or commodity pool operator of a covered fund;

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[59] *See* Preamble at 521.

[60] Final Regulations § __.10(c)(10)(i).

[61] Final Regulations § __.10(c)(10)(ii).

[62] Final Regulations § ___.10(d)(6)(i).

[63] *Id.*

[64] Final Regulations §__.10(d)(6)(ii).

[65] A "trustee" does not include a trustee that does not exercise investment discretion with respect to a covered fund, including a trustee that is subject to the direction of an unaffiliated named fiduciary who is not a trustee pursuant to section 403(a)(1) of the Employee's Retirement Income Security Act, or a trustee that is subject to fiduciary standards under non-U.S. law that are substantially equivalent to those of such a

- In any manner selects or controls (or has employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a covered fund; or
- Shares the same name or a variation of the same name with a covered fund, for orporate, marketing, promotional, or other purposes.[66]

A banking entity that merely acts as an investment adviser to a covered fund, even pursuant to discretionary authority, does not appear thereby to be a "sponsor" of that fund.

C. Permitted Covered Fund Activities "Solely Outside the United States"

The Final Regulations provide an exemption that permits non-U.S. banking entities to engage in otherwise prohibited covered fund activity outside the United States. This exemption is available only to non-U.S. banking entities that meet the requirements of the exemption, and not to U.S. banking entities and their subsidiaries.[67] Non-U.S. banking entities also may rely on any of the exemptions available to any banking entity (U.S. or non-U.S.), provided the applicable requirements are met. (These exemptions are discussed in Bingham McCutchen LLP Legal Alert: Final Volcker Rule Regulations: Restrictions on Covered Fund Activities and Investments)

As explained above, the definition of covered fund in the Final Regulations was narrowed from the Proposed Regulations such that certain non-U.S. funds may be covered funds only from the perspective of a U.S. banking entity (or a non-U.S. banking entity controlled by a U.S. banking entity). A non-U.S. banking entity will not need to rely on the exemption for fund activities and investments "solely outside the United States" discussed below (or any other exemption) if the foreign fund is not a covered fund from the non-U.S. banking entity's perspective.

A non-U.S. banking entity may rely on the exemption for fund activities or investments "solely outside the United States" to acquire or retain an ownership in, or to sponsor, a covered fund, only if the following conditions are met:

- The banking entity is not organized or directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States;[68]
- The activity or investment by the banking entity is pursuant to section 4(c)(9) or 4(c)(13) of the BHC Act;[69]
- No ownership interest in the covered fund is offered for sale or sold to a resident of the United States;[70] and

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non-discretionary trustee. Final Regulations § __.10(d)(10). However, an entity that directs such a person, or that possesses authority and discretion to manage and control the investment decisions of a covered fund for which such person serves as trustee, is considered to be a trustee of such covered fund. *Id.*

[66] Final Regulations § __.10(d)(9).

[67] Final Regulations § __.13(b).

[68] Final Regulations § __.13(b)(1)(i).

[69] Final Regulations § __.13(b)(1)(ii).

- The activity or investment occurs solely outside the United States.[71]

1. Activity or Investment Pursuant to Section 4(c)(9) or 4(c)(13) of the BHC Act

An activity or investment by the banking entity is pursuant to Section 4(c)(9) or 4(c)(13) of the BHC Act only if:

- The activity or investment is conducted in accordance with the requirements of this exemption for fund activities or investments "solely outside the United States;"[72] and
- The banking entity is a foreign banking organization that is a QFBO or, if not a foreign banking organization, meets the eligibility requirements described in Section III.B.1 above.[73]

2. No Offer or Sale to a Resident of the United States

An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of the exemption for fund activities or investments "solely outside the United States" if it is sold or has been sold pursuant to an offering that does not target residents of the United States.[74] The Preamble explains that, absent circumstances otherwise indicating a nexus with residents of the United States, the sponsor of a foreign fund would not be viewed as targeting U.S. residents if it conducts an offering directed to residents of one or more countries other than the United States; includes in the offering materials a prominent disclaimer that the securities are not being offered in the United States or to residents of the United States; and includes other reasonable procedures to restrict access to offering and subscription materials to persons that are not residents of the United States.[75]

According to the Preamble, the Agencies expect that activities related to certain complex fund structures should be integrated in order to determine whether an ownership interest in a covered fund is offered for sale to a resident of the United States. For example, the Agencies suggest that a banking entity may not be able to rely on the non-U.S. fund exemption to sponsor or invest in a covered fund (that is offered for sale only overseas and not to residents of the United States) that is itself organized or operated for the purpose of investing in another covered fund (that is sold pursuant to an offering that targets U.S. residents) and that is either organized and offered or is advised by that banking entity.[76]

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[70] Final Regulations § __.13(b)(1)(iii).

[71] Final Regulations § __.13(b)(1)(iv).

[72] Final Regulations § __.13(b)(2)(i).

[73] Final Regulations §§ __.13(b)(2)(ii)(C). and __.13(b)(2)(ii)(B).

[74] Final Regulations § __.13(b)(3).

[75] Preamble at 742-43. If ownership interests that are issued in a non-U.S. offering are listed on a non-U.S. exchange, secondary market transactions could be undertaken by the banking entity outside the United States in accordance with Regulation S under the exemption for fund activities or investments "solely outside the United States." *Id.*

[76] *See* Preamble at 743-44.

3. "Resident of the United States"

A "resident of the United States" is defined in the Final Regulations as a "U.S. person" as defined in rule 902(k) of the SEC's Regulation S.[77] However, the Agencies noted in the Preamble that it would not be permissible under the exemption for fund activities or investments "solely outside the United States" for a non-U.S. banking entity to facilitate or participate in the formation of a U.S. investment vehicle that is itself a U.S. person for the specific purpose of investing in a non-U.S. fund.[78]

4. Activity or Investment "Solely Outside the United States"

In the Final Regulations, the Agencies replaced the transaction-based approach for determining when activity or investment occurs "solely outside the United States" under the Proposed Regulations with a risk-based approach.[79] An activity or investment occurs solely outside the U.S. for purposes of this exemption only if:

- The banking entity acting as a sponsor, or engaging as principal in the acquisition or retention of the ownership interest in the covered fund, is not itself, and is not controlled directly or indirectly by, a banking entity that is located in the United States or organized under the laws of the United States or of any State;[80]
- The banking entity (including relevant personnel) that makes the decision to acquire or retain the ownership interest or act as a sponsor to the covered fund is not located in or organized under the laws of the United States or of any State;[81]
- The investment or sponsorship, including any transaction arising from risk-mitigating hedging related to an ownership interest, is not accounted for as principal, directly or indirectly, on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State;[82] and
- No financing for the banking entity's ownership or sponsorship is provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.[83]

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[77] Final Regulations § __.10(d)(8). As proposed, the definition of resident of the United States was similar, but not identical, to the Regulation S definition, but commenters cautioned that any differences would create unnecessary uncertainty and increase compliance burdens associated with monitoring multiple definitions. *See* Preamble at 621-22.

[78] Preamble at 745.

[79] *See* Preamble at 735.

[80] Final Regulations § __.13(b)(4)(i).

[81] Final Regulations § __.13(b)(4)(ii).

[82] Final Regulations § __.13(b)(4)(iii).

[83] Final Regulations § __.13(b)(4)(iv).

For the purposes of this exemption, a non-U.S. banking entity that has branches, agents, or subsidiaries in the U.S. is not considered a U.S. entity. However, a non-U.S. entity that is controlled by or acting on behalf of a U.S. entity will be treated as a U.S. entity for the purposes of this analysis.[84]

The Agencies explained that these requirements are designed to ensure that any non-U.S. banking entity engaging in activity under this exemption for fund activities or investments "solely outside the United States" does so in a manner that ensures that the risk and sponsorship of the activity occurs and resides solely outside the United States.[85]

The Preamble states that because so-called "back office" activities do not involve sponsoring or acquiring an ownership interest in a covered fund, the Final Regulations do not impose restrictions on U.S. personnel of a non-U.S. banking entity engaging in those activities with one or more covered funds. The Preamble also clarifies that the exemption for fund activities or investments "solely outside the United States" permits the U.S. personnel and operations of a non-U.S. banking entity to act as investment advisor to a covered fund in certain circumstances.[86]

D. Limitations on Relationships Between Banking Entities and Covered Funds

The Final Regulations include so-called "Super 23A" provisions that largely track the equivalent provisions from the Proposed Regulations.[87] However, by excluding certain categories of entities from the definition of covered fund (see above), the Final Regulations make the "Super 23A" inapplicable to transactions between banking entities and the excluded categories of entities.[88]

As a result, a non-U.S. banking entity will not be required to comply with the "Super 23A" provisions with respect to a non-U.S. fund which qualifies for the foreign public fund exclusion or the exclusion for foreign pension and retirement funds. In addition, a non-U.S. banking entity will not be required to comply with "Super 23A" with respect to any non-U.S. fund which is not a covered fund from the perspective of the non-U.S. banking entity.

"Super 23A" will apply to a non-U.S. banking entity with respect to a fund that relies on section 3(c)(1) or 3(c)(7) of the Investment Company Act or is a commodity pool which is a covered fund, unless the fund is eligible for an exclusion from the definition of covered fund. However, "Super 23A" will not apply to any other non-U.S. fund from the point of view of a non-U.S. banking entity (not controlled by a U.S. banking entity), even if it is a non-U.S. fund that is a covered fund from the point of view of the U.S. banking entity (or non-U.S. banking entity controlled by a U.S. banking entity) that sponsors or invests in the non-U.S. fund.

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[84] *See* Final Regulations § __.13(b)(5).

[85] *See* Preamble at 736.

[86] *See* Preamble at 736-37.

[87] Final Regulations § __.14(a) and (b).

[88] *Id.*

1. "Super 23A" Restriction

A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, commodity trading advisor, or sponsor to a covered fund (or any affiliate of such a banking entity) is prohibited from entering into a transaction with the covered fund, or with any other covered fund controlled by such covered fund, that would be a covered transaction as defined in section 23A of the Federal Reserve Act, as if such banking entity were a member bank and the covered fund were an affiliate thereof.[89]

- "Covered transactions" include, for example, loans and other extensions of credit; purchases of securities or other assets; and credit exposure from derivatives transactions, securities lending and borrowing transactions, and repurchase agreement transactions.[90]

This restriction is broader than the Section 23A restriction on covered transactions between banks and their affiliates.

- The Final Regulations prohibit covered transactions between banking entities (including their affiliates) and covered funds subject to the restriction, while Section 23A permits covered transactions between banks and their affiliates provided certain quantitative and qualitative requirements are met.[91]

- In addition, Section 23A's exemptions for certain types of covered transactions would generally not be applicable (*e.g.*, no exemptions for transactions secured by cash or government securities, or for intra-day extensions of credit).[92]

- However, the Agencies did clarify in the Preamble that the Section 23A "attribution rule" does not apply in this context.[93] As a result, the "Super" 23A restrictions do not apply to transactions with a third party other than the covered fund.

The Final Regulations provide exceptions that allow a banking entity to:

- Acquire and retain any ownership interest in a covered fund in accordance with one of the exemptions in the Final Regulations;[94] and

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[89] Final Regulations § __.14(a)(1). Section 23A of the Federal Reserve Act imposes certain qualitative and quantitative restrictions on "covered transactions" between banks and their affiliates, and requires that certain collateral be maintained for certain extensions of credit by a member bank to any of its affiliates.

[90] *See* 12 U.S.C. § 371c(b)(7).

[91] *See* Final Regulations § __.14(a)(2); 12 U.S.C. § 371c(a) and (c).

[92] *See* Preamble at 753-55; 12 U.S.C. § 371(d).

[93] *See* Preamble at 755-56. Under the "attribution" rule, subject to certain exceptions, a transaction between a bank and an unaffiliated third party is treated for purposes of Sections 23A of the Federal Reserve Act as a transaction between the bank and its affiliate to the extent that the proceeds from the transaction are used for the benefit of, or transferred to, an affiliate. *See,* 12 U.S.C. § 371c(a)(3); 12 C.F.R. § 223.16(a).

[94] Final Regulations § __.14(a)(2)(i).

- Enter into a prime brokerage transaction with any covered fund in which a covered fund managed, sponsored, or advised by such banking entity (or affiliate) has taken an ownership interest, if:
  - The banking entity is in compliance with the exemption for organizing and offering a covered fund, as applicable;[95]
  - The banking entity's CEO (or equivalent officer) certifies in writing annually to the appropriate Agency (with a duty to update the certificate if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests;[96] and
  - The FRB has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity.[97]

2. Market Terms Requirement

A banking entity which is subject to the "Super 23A" restriction with respect to a covered fund is also subject to section 23B of the Federal Reserve Act with respect to that fund, as if such banking entity were a member bank and the covered fund were an affiliate thereof.[98] Section 23B of the Federal Reserve Act requires that covered transactions and certain other transactions between a member bank and any of its affiliates be conducted on market terms.[99]

Notwithstanding the potential exemption for prime brokerage from the "Super 23A" restriction, a prime brokerage transaction remains subject to this market terms requirement as if the counterparty were an affiliate of the banking entity.[100]

V. Other Limitations on Proprietary Trading and Covered Fund Activities

Under the "back stop" provisions of the Final Regulations, an otherwise permissible activity may be deemed impermissible if the activity would pose a threat to the safety and soundness of the banking entity or the financial stability of the United States, would result in a material conflict of interest, or result in a material exposure to a high-risk asset or a high-risk trading strategy.[101]

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[95] Final Regulations § __.14(a)(2)(ii)(A).
[96] Final Regulations § __.14(a)(2)(ii)(B).
[97] Final Regulations § __.14(a)(2)(ii)(C).
[98] Final Regulations § __.14(b).
[99] *See* 12 U.S.C. § 371c-1.
[100] Final Regulations § __.14(c).
[101] Final Regulations §§ ___.7(a) and ___.15(a).

VI. Compliance Program Requirements

Banking entities, including non-U.S. banking entities, that engage in proprietary trading and/or covered fund activity as permitted under the Volcker Rule must implement internal controls and compliance programs reasonably designed to ensure and monitor compliance with the Final Regulations, and to comply with reporting and recordkeeping requirements.[102] A banking entity, including a non-U.S. banking entity, that does engage in any covered activities or investments need not establish a compliance program unless it becomes engaged in permitted proprietary trading or covered fund activities.[103] If required, a banking entity must establish the internal controls and compliance program as soon as practicable and in no event later than the end of the conformance period, which is July 21, 2015.[104]

The internal controls and compliance program must be appropriate for the size, scope and complexity of the activities and business structure of the banking entity.[105] Banking entities are expected to tailor their compliance programs to specific covered activities and the exemption on which they rely to conduct those activities. (For a detailed description of the compliance program requirements of the Final Regulations, *see* Bingham Alert: Volcker Rule: Compliance Program, Reporting, and Recordkeeping Requirements.)

The Final Regulations set forth minimum standards for any banking entity that is required to have a compliance program.[106] In addition, enhanced internal control and compliance program standards apply to a non-U.S. banking entity if:

- The average gross sum of the trading assets and liabilities of the combined U.S. operations of the non-U.S. banking entity (including all subsidiaries, affiliates, branches, and agencies of the non-U.S. banking entity operating, located or organized in the United States and excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) over the previous four quarters, as measured as of the last day of each of the four prior calendar quarters, equals or exceeds $50 billion beginning on June 30, 2014, $25 billion beginning on April 30, 2016, or $10 billion beginning on December 31, 2016; or
- The non-U.S. banking entity has total U.S. assets as of the previous calendar year of $50 billion or more (including all subsidiaries, affiliates, branches and agencies of the non-U.S. banking entity operating, located or organized in the United States).[107]

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[102] Final Regulations §__.20(a).

[103] Final Regulations §__.20(f)(1).

[104] Some banking entities will be required to report and record quantitative measurements regarding certain proprietary trading activities beginning as of June 30, 2014.

[105] Final Regulations §__.20(a).

[106] *See* Final Regulations §__.20(b). A banking entity with total assets of less than $10 billion or less as reported on December 31 of the two previous calendar years may satisfy its compliance program obligations by including in its existing compliance policies and procedures appropriate references to the Volcker Rule and the Final Regulations and adjustments as appropriate given the activities, size, scope and complexity of the banking entity. Final Regulation §__.20(f)(2).

One important addition to the enhanced internal control and compliance program standards in the Final Regulations is a requirement that the CEO of the banking entity attest in writing to the appropriate Agency that the banking entity has a compliance program reasonably designed to comply with the Volcker Rule and the Final Regulations. For the U.S. operations of a non-U.S. banking entity, the attestation may be provided by the senior management officer of the U.S. operations of the non-U.S. banking entity who is located in the United States.[108]

A banking entity that has more than $10 billion in total consolidated assets as reported on December 31 of the previous two years must maintain certain documentation regarding covered funds. Such documentation must include, as applicable, documentation of the banking entity's determination that a fund is not a covered fund because it relies on an exclusion or exemption other than section 3(c)(1) or 3(c)(7) of the Investment Company Act or qualifies for one of certain exclusions from the definition of covered fund provided by the Final Regulations, including the exclusions for foreign public funds, foreign pension or retirement funds, and qualifying covered bonds.[109] In addition, any non-U.S. subsidiary of a U.S. banking entity (including a U.S. banking entity affiliated with a non-U.S. banking entity) that holds aggregate ownership interests in foreign public funds excluded from the definition of covered fund exceeding $50 million at the end at the end of two or more consecutive calendar quarter, must maintain documentation of the value of its ownership interests in each foreign public fund and each jurisdiction in which any such foreign public fund is organized.[110]

VII. Conformance Period

By statute, a banking entity (including a non-U.S. banking entity subject to the Volcker Rule) must bring its activities and investments into compliance with the Volcker Rule and the Final Regulations no later than two years after the statutory effective date, which effective date was July 21, 2012, unless extended by the FRB. Thus, absent extension, compliance would have been required by July 21, 2014. The FRB may grant up to three one-year extensions of the compliance transition period if the extension would be consistent with the purposes of the Volcker Rule and would not be detrimental to the public interest. For certain "illiquid funds," an additional extension of up to five years may be available to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.[111]

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[107] Final Regulations §§__.20(c)(1) and (2) and (d). A non-U.S. banking entity also will be subject to the enhanced compliance program requirements if the appropriate Agency notifies the non-U.S. banking entity that it must comply with those requirements. *See* Final Regulations §__.20(c)(3).

[108] Final Regulations, App. B, § III; Preamble at 803.

[109] Final Regulations § __.20(e)(1) and (2).

[110] Final Regulations § __.20(e)(1) and (3).

[111] The FRB issued final regulations regarding the conformance period and extended transition period authorities for the Volcker Rule on February 11, 2011 (the "Conformance Period Regulations"). As part of the Proposed Regulations, the Agencies proposed to relocate the Conformance Period Regulations from §§ 225.180-182 of the FRB's Regulation Y to Subpart E of the Volcker Rule regulations. Although Subpart E was not included in the Final Regulations published by the Agencies, the Conformance Period Regulations remain effective as adopted by the FRB.

Concurrently with its adoption of the Final Regulations, the FRB issued an order (the "Order") which granted a one-year extension of the conformance period until July 21, 2015.[112] The Order explains that, during the conformance period, each banking entity will be expected to engage in good-faith efforts, appropriate for its activities and investments, that will result in the conformance of all of its activities and investments to the requirements of the Volcker Rule and the Final Regulations by no later than the end of the conformance period. Good faith efforts include evaluating the extent to which the banking entity is engaged in activities and investments that are covered by the Volcker Rule and the Final Regulations, as well as developing and implementing a conformance plan that is appropriately specific about how the banking entity will fully conform all of its covered activities and investments by the end of the conformance period. Banking entities should not expand activities and make investments during the conformance period with an expectation that additional time to conform those activities or investments will be granted.[113] Furthermore, banking entities "with stand-alone proprietary trading operations are expected to promptly terminate or divest these operations."[114]

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Please direct questions to the authors or a member of our Volcker Rule team or the Bingham lawyer with whom you ordinarily work.

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[112] *See* FRB, Order Approving Extension of Conformance Period, *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf.

[113] *See* Order, at 3.

[114] *Id.*

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