

December 19, 2014

## The Fed Extends Volcker Rule Conformance for Private Funds

*The Federal Reserve Board has announced that it has extended the Volcker Rule's conformance period for compliance with the private fund provisions for investments in, and relationships with, "legacy" covered funds.*

On December 18, the Federal Reserve Board (the Board) announced that it has extended the conformance period for compliance with the private investment fund (covered fund) restrictions of the Volcker Rule for one additional year—from July 21, 2015 to July 21, 2016—for covered fund investments and relationships by banking entities that were in place prior to December 31, 2013 ("legacy covered funds").<sup>1</sup> In addition, the Board has stated that it intends to take the same action next year to extend the Volcker Rule conformance period for legacy covered funds for yet one more year, to July 21, 2017.

The highlights of the Board's action are as follows:

- **Only those banking entity investments in, and relationships with, legacy covered funds may rely on this extension.** Any covered fund investments or relationships by a banking entity that were made or established on or after December 31, 2013 must be brought into conformance with the Volcker Rule by the current conformance date of July 21, 2015.<sup>2</sup>
- **There is no extension of the Volcker Rule conformance period for proprietary trading activities.** All proprietary trading activities of a banking entity must be brought into conformance with the Volcker Rule by July 21, 2015.
- **All covered fund conformance activities—legacy covered funds and otherwise—will continue to be subject to the Board's "good faith" compliance standard for conforming to the Volcker Rule's requirements.** The Board's April 2012 Statement of Policy on Volcker Rule conformance activities remains fully in effect,<sup>3</sup> and the Board made it plain in the December 18 action that banking entities are expected to make plans "well in advance of the end of the extended conformance period" as to how they will bring their legacy covered fund activities into compliance.
- **The Board has promised to take action in 2016 to extend the Volcker Rule conformance period until July 21, 2017.** Under the Dodd-Frank Act, the Board may grant only three one-year extensions of the Volcker Rule conformance period and must do so one year at a time. By statute, however, this will be the last one-year conformance period extension that the Board will be permitted to grant.

There was a growing industry expectation that the Board would act in some manner to extend the Volcker Rule conformance period, given the formidable challenges that banking organizations and fund managers faced in trying to comply with the Volcker Rule's covered fund restrictions by the prior July 21, 2015 deadline. Nevertheless, the Board's action will be strongly welcomed by the banking and private funds communities.

When the Board acted in 2013 to extend the Volcker Rule conformance period to 2015, the Board indicated that it would not look with favor on conformance period extension requests for new proprietary trading and covered fund

1. View the press release at <http://www.federalreserve.gov/newsevents/press/bcreg/20141218a.htm>.

2. View the 2013 conformance period order at <http://www.volckerrule.com/docs/bcreg20131210b1.pdf>.

3. View the 2012 policy at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-08/pdf/2012-13937.pdf>.

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activities.<sup>4</sup> In keeping with this admonition, the Board's latest action excludes covered fund investments and relationships that were established in 2014, meaning that those investments and activities must abide by the July 21, 2015 conformance date. This also means that a banking entity that is contemplating a new covered fund activity or investment at this time effectively needs to ensure that the activity or investment complies at its inception with the Volcker Rule.

Ultimately, the Board's action only postpones the inevitable. Absent congressional action to modify the Volcker Rule, full compliance with its requirements will be required within the next two and a half years. That said, the additional time will give the banking and investment communities some much-needed breathing room to reconfigure and adjust their covered fund activities and investments. The extended conformance period will also give the Board and the other federal financial regulators responsible for Volcker Rule implementation additional time to issue clarifying guidance—also much-needed—regarding the covered funds prohibition that the banking and investment communities have been requesting since the passage of the Dodd-Frank Act.

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4. See *supra* note 2.