Agencies Extend Volcker Rule Relief for Qualifying Foreign Excluded Funds

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As widely expected, the Volcker Agencies[1] **extended relief** from the Volcker Rule that was first granted to eligible foreign funds in 2017. The agencies' action provides that the proprietary trading and covered fund prohibitions of the Volcker Rule do not apply: (1) to a foreign banking entity for activities or investments of a qualifying foreign excluded fund that is controlled by that foreign banking entity or (2) to that qualifying foreign excluded fund.

The relief was **originally granted** in July 2017 for a one-year period. The Volcker Agencies extended the relief for another one-year period in May 2018, which is due to expire on July 21, 2019. The joint statement extends the relief for two years, until July 21, 2021.

The criteria for relief from the Volcker Rule is identical to that of the 2017 and 2018 relief. In particular, the relief is available to a foreign banking entity for a qualifying foreign excluded fund, defined to include a fund that:

- is organized outside the United States and is offered and sold solely outside the United States;
- would be a covered fund were the entity organized in the United States, or is, or holds itself out as being, an entity that raises money from investors primarily for the purpose of investing in financial instruments;
- would not otherwise be a banking entity except by virtue of the foreign banking entity's ownership or sponsorship of the entity;
- is established and operated as part of a bona fide asset management business; and
- is not operated in a manner that enables the foreign banking entity to evade the requirements of the Volcker Rule.

The extension of relief for a two-year period is welcome news for foreign banking entities that control qualifying foreign excluded funds and that could otherwise be seen as violating the Volcker Rule based on the activity of these funds. Nonetheless, neither the original relief nor the extensions address the more fundamental concerns of the Volcker Rule's broad extraterritorial application to the activities of foreign banking entities. The extended relief remains a temporary solution to these issues, though we expect some more permanent relief may accompany amendments to the Volcker Rule currently being considered by the Volcker Agencies.

[1] The Federal Reserve Board, OCC, FDIC, SEC and CFTC.

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