DECEMBER 2013

VOLCKER RULE HIGHLIGHTS AND INITIAL REACTIONS

EXECUTIVE SUMMARY

On December 10, 2013, five financial regulatory agencies[1] adopted a final rule (the "Volcker Rule" or the "Rule") to implement the prohibitions on engaging in proprietary trading, and on owning, sponsoring or having certain relationships with hedge funds or private equity funds ("covered funds"), that apply to a "banking entity"[2] pursuant to the so-called "Volcker Rule" provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3]

The Volcker Rule, named for Paul A. Volcker, a former Chairman of the Board of Governors of the Federal Reserve System and advisor to President Obama, was intended to restrict activities thought to increase the fragility of the United States ("U.S.") financial system. The Rule has far-reaching implications for both domestic and foreign banking entities. The full effects of the Rule will take time to unfold completely through supervisory application and

1 The Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation ("FDIC"), Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") (collectively, the "Agencies").

2 A "banking entity" includes: (i) any FDIC-insured depository institution, such as a commercial bank or savings bank; (ii) any company that controls an insured depository institution, such as a bank holding company ("BHC"), savings and loan holding company or industrial loan company; (iii) any foreign bank that is treated as a BHC for purposes of Section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), such as a foreign bank that operates a U.S. branch or agency; and (iv) any affiliate or subsidiary of any of these entities.

3 Section 13 of the Bank Holding Company Act of 1956 ("BHC Act"), 12 U.S.C. 1851, as added by Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. A summary of Section 13 of the BHC Act is included in Jones Day, "More Than Just Financial Reform: Analysis and Observations on the Dodd-Frank Wall Street Reform and Consumer Protection Act" (August 2010), available at http://www.jonesday.com/files/Publication/d7d71bc5-6ee4-4144-9a0b-91b6d95cb2a9/Presentation/PublicationAttachment/24bcecbc-dc1f-4863-9204-93fdcb9bcc8e/Financial%20Reform%20Dodd-Frank%20White%20Paper.pdf.

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interpretation that will shape the operations of U.S. and foreign banking organizations.

Importantly, as discussed in greater detail below, the reach of the Volcker Rule goes far beyond banks. Any corporation accessing capital markets or entering into hedging transactions with banks may find that the cost of capital has increased and that access to capital, particularly on a global basis, has become more restrictive. Asset managers and investors may see greater price volatility for securities, less availability of higher risk investments and greater bid/ask spreads. Overall, we may see less liquidity for certain segments of financial markets. The Volcker Rule is likely to have many unintended consequences that will take a number of years to unfold.

Jones Day will publish more detailed commentaries regarding the Volcker Rule in the coming weeks, and will host a series of webinars to explain and discuss key provisions of the Rule. Our commentaries and webinars will explore and provide practical guidance on the intended and unintended effects of the Rule on all types of market participants and US and foreign banking entities.

PROPRIETARY TRADING

The Volcker Rule generally prohibits banking entities from engaging in proprietary trading of securities, derivatives, commodity futures, and options on these instruments for their own account. The Volcker Rule provides limited and detailed exemptions for certain (i) securities underwriting; (ii) market making-related activities; (iii) hedging that mitigates risk; (iv) trading activities of foreign banking entities, provided the trading decisions and principal risks of the foreign banking entity occur and are held "solely outside the U.S." (the "SOTUS exemption"); (v) trading in U.S. government, agency, state and municipal obligations; (vi) trading on behalf of a customer in a fiduciary capacity or in riskless principal trades; and (vii) activities of an insurance company for its general or separate accounts.

Several activities are not considered proprietary trading, subject to satisfaction of requirements in the Rule, such as trading (i) solely as an agent, broker or custodian; (ii) through a deferred compensation or similar plan; (iii) to satisfy a debt previously contracted; (iv) under some repurchase and securities lending agreements; and (v) for liquidity management purposes under a written liquidity plan.

COVERED FUND ACTIVITIES AND INVESTMENT

The Volcker Rule generally prohibits banking entities from owning, sponsoring or having certain relationships with covered funds, subject to exclusions. "Covered funds" include any issuer that would be an investment company under the Investment Company Act if not otherwise excluded by Section 3(c)(1) or Section 3(c)7 of that Act.

Several types of entities that serve general corporate purposes of banking organizations are excluded from the definition of covered funds. These entities include wholly owned subsidiaries, joint ventures, business acquisition vehicles, and business development companies. Additionally the Volcker Rule provides an exclusion for SEC-registered investment companies, certain foreign funds that are publicly offered abroad, qualifying loan securitizations, small business investment companies, public welfare investments and insurance company separate accounts.

The Volcker Rule permits banking entities to invest in or sponsor a covered fund in connection with organizing or offering a covered fund for which the banking entity is providing trustee or advisory services; organizing, offering or investing in an issuer of permitted asset-backed securities; some types of hedging that mitigate risk; activities that occur SOTUS, provided no ownership interest in the covered fund is offered for sale or sold to a U.S. resident; and insurance company activities, all subject to additional conditions. A banking entity that acts on behalf of customers as an agent, broker, custodian, or trustee or in a similar fiduciary capacity will not be deemed to be engaging in prohibited covered fund activities or investments, provided certain requirements are met. Additionally, a banking entity will not be considered to be engaging in prohibited covered fund activities or investments when acting in the ordinary course of collecting a debt previously contracted.

COMPLIANCE

The Volcker Rule requires banking entities to establish and maintain strong, well-documented internal compliance programs to monitor and ensure compliance with the Rule. Compliance requirements vary based on the size and

complexity of the banking entity and the volume of trading and covered fund activities in which the entity engages. A larger banking entity that has significant proprietary trading and covered fund activities will have a substantially greater compliance burden than a smaller, less complex banking entity.

The Volcker Rule is effective April 1, 2014. The Board of Governors of the Federal Reserve System extended the date by which banking entities must comply fully with most requirements of the Rule until July 21, 2015.

* * *

Highlights of the proprietary trading, covered funds and compliance provisions of the Volcker Rule are described below, followed by our initial impressions of certain consequences of the Rule.

PROPRIETARY TRADING

Banking entities may not engage in proprietary trading, except as permitted by the Rule.

DEFINITION OF PROPRIETARY TRADING

In general, "proprietary trading" is defined as "engaging as principal for the trading account of a banking entity in any purchase or sale of one or more financial instruments." All terms in this definition – other than "principal" - have specific definitions. "Financial instruments" include (i) securities (as defined in the Securities Exchange Act of 1934 (the "Exchange Act")); (ii) derivatives (as broadly defined, but excluding any instrument not defined as a "swap" or a "security-based swap" by the CFTC or the SEC in their Dodd-Frank Act rules); and (iii) contracts or options on contracts for the sale of a commodity for future delivery. A "trading account" is an account used to purchase or sell financial instruments that (i) are for profit on a short-term basis (with a rebuttable presumption that 60 days is a short-term basis); (ii) are subject to market-risk capital charges and are held in the banking entity's trading book; or (iii) constitute part of a banking entity's business as a dealer in securities, a swap dealer or a securities-based swap dealer, even if the entity is not required to register as such due to its off-shore status.

EXCEPTIONS

The Volcker Rule contains three categories of exceptions to proprietary trading: definitional exclusions; activity exceptions and entity exclusions.

Definitional exclusions: Loans, physical commodities for spot delivery and foreign exchange are not "financial instruments." The Rule also exempts a number of transactions from the definition of "proprietary trading": (i) repurchase agreements; (ii) securities lending agreements; (iii) "liquidity management" transactions in high-grade, non-volatile securities under a documented plan with risk limits, policies and procedures and provisions for audit (collectively, "internal controls"); (iv) clearing-related transactions, including taking positions in anticipation of a default by a clearing organization, clearing member or customer[4]; (v) transactions necessitated by contractual, judicial or regulatory requirements; (vi) transactions solely as agent, broker, custodian, fiduciary or riskless principal; (vii) transactions that are made though an employee-benefit plan by the banking entity as trustee and (viii) financial instruments that are acquired in good faith and in the ordinary course of collecting a debt previously contracted, provided they are divested as soon as practicable.

Transactions in U.S. government and agency (including the FDIC or "bridge" institutions, in connection with bank or "orderly liquidation authority" insolvencies) securities and certain state or municipal securities are permitted to all banking entities. Further, foreign or foreign-controlled banking entities that are not FDIC-insured depository institutions are permitted to transact in sovereign debt of the foreign jurisdiction, provided that the "top-tier banking entity" is not a U.S. bank. Finally, U.S.-controlled foreign banks and foreign securities dealers are permitted to transact in sovereign debt of the foreign jurisdiction, provided the debt is not financed by a U.S. affiliate.

Activity exceptions: The underwriting activity exception permits a banking entity to hold positions in underwritten securities, provided these positions do "not…exceed the reasonably expected near term demands of clients, customers, or counterparties, and reasonable efforts are made to sell…

4 A parallel exclusion for transactions in anticipation of a default by an over-the-counter derivatives counterparty is notably absent.

the position within a reasonable period….” A banking entity's underwriting activities must also be subject to internal controls and its compensation arrangements must promote compliance (“compensation controls”). Finally, in order to qualify as a permitted “distribution,” non-registered offerings must be “distinguished from ordinary trading transactions by the presence of special selling efforts and selling methods….”

The market making exception, which permits a banking entity to hold positions in securities for market making purposes, is similarly predicated upon the requirement that inventory be “designed not to exceed, on an on-going basis, the reasonably expected near term demands of clients, customers or counterparties….” The relevant trading desk must also “stand[] ready” to enter into long and short positions in the relevant type(s) of financial instruments, “in commercially reasonable amounts and throughout market cycles.” Market making activities are likewise similarly subject to internal controls and compensation controls. Troublesome questions include the effects and consequences of a change – sudden or otherwise – in these “reasonably expected near term demands” or in market cycles and times when market making can be suspended. For banking entities with at least $50 billion of trading assets and liabilities, the Volcker Rule mandates extensive documentation as to “how and why” such entities should be treated as clients, customers and counterparties.

The hedging exception allows the holding of financial instruments as hedges and permits such holding to hedge aggregate or “portfolio” positions as well as individual, specific positions. Hedging activity must be “designed to reduce or otherwise significantly mitigate and demonstrably reduces or otherwise significantly mitigates one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts or other holdings….” Hedging is subject to internal controls and compensation controls.

Banking entities must specifically document, contemporaneously with the establishment of a putative hedge, the specific risks addressed and strategies utilized when a trading desk's risk is being hedged by another trading desk; when a trading desk hedges its own exposure using instruments or techniques not specifically identified in the desk's policies and procedures; and when multiple trading desks' risks are being hedged in aggregate.

Entity exclusions: Certain types of entities are excluded from the proprietary trading ban. Insurance companies and their affiliates are largely exempt, provided they operate in accordance with applicable prudential regulations. The Volcker Rule also incorporates the statutory SOTUS exemption to the prohibition on proprietary trading for transactions conducted by foreign banking entities, and permits a foreign banking entity to conduct anonymous proprietary trades on U.S. exchanges and to engage in proprietary trades with unaffiliated market intermediaries (such as a U.S. broker-dealer) that are cleared though a U.S. central counterparty. Proprietary trades with U.S. counterparties pursuant to bilateral, uncleared transactions generally remain prohibited.

“EXCEPTIONS TO THE EXCEPTIONS”

Even if a certain activity meets one of the exceptions, it will nonetheless be impermissible (i) if it presents a “material conflict of interest” between the banking entity and its clients, customers, or counterparties (unless mitigated by disclosure or information barriers); (ii) if it creates a “material exposure” to a “high-risk asset” or “high-risk trading strategy” (that is, assets or strategies that are deemed to represent an increased likelihood of a substantial financial loss or that pose a threat to the financial stability of the United States); or (iii) if it otherwise generally poses a threat to the safety and soundness of the banking entity or to the financial stability of the United States. In effect, these exceptions permit any of the Agencies to regulate independently of the other Agencies on the basis of the conduct they observe at entities within their jurisdiction.

COVERED FUNDS

GENERAL PROHIBITION ON SPONSORSHIP OR OWNERSHIP OF COVERED FUNDS

The Volcker Rule generally places a “ban on bank investment in hedge funds and private equity funds” by prohibiting

banking entities from owning or sponsoring "covered funds." However, the universe of covered funds, as defined, captures a broad array of entities in addition to hedge and private equity funds, including most structured debt issuers. The definition of "covered fund" generally includes:

- any 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;
- for a U.S. banking entity, any fund[5] that is established outside of the U.S. the ownership interests of which are offered and sold exclusively outside of the U.S. (this provision is designed to capture non-U.S. entities that would be 3(c)(1) or 3(c)(7) entities if formed in the U.S.); and
- any commodity pool for which the commodity pool operator has claimed an exemption under 17 CFR 4.7 and similar commodity pools.

Because Section 3(c)(1) of the Investment Company Act (i.e., an exception for issuers which have 100 or fewer beneficial owners of their securities other than short-term paper) and Section 3(c)(7) of the Act (i.e., an exception for issuers owned only by "qualified purchasers") are the main provisions of the Investment Company Act on which many types of entities, from wholly owned subsidiaries without operating businesses to issuers of CLOs, CDOs and other structured products, typically rely in order to avoid registering as investment companies under the Act, this definition captures many more entities than one might expect. The inclusion of "commodity pools," given that other provisions of Dodd-Frank significantly expanded the definition of commodity pools, similarly causes the universe of "covered funds" to be quite broad.

In recognition of the fact that the definition of "covered fund" due to its reliance on 3(c)(1) and 3(c)(7) captures numerous funds that are neither hedge funds nor private equity funds, the Agencies have exempted certain entities from the definition of covered fund, including among others:

- certain foreign funds that are publicly offered abroad;
- wholly owned bank subsidiaries, joint ventures engaged in permitted activities for the banking affiliate other than investing in securities for trading or resale, and acquisition vehicles;
- loan securitizations the holdings of which are limited to (i) loans, (ii) cash equivalents; (iii) securities received in lieu of debts previously contracted with respect to the loans; (iv) loan servicing rights, (v) interest rate and currency derivatives for hedging purposes, and (vi) certain special units of beneficial interest and collateral certificates;
- qualifying asset-backed paper conduits and covered bonds;
- insurance company general accounts, small business investment company and public welfare investments; and
- such other entities as determined by the Federal banking regulators, the SEC and the CFTC.

These exclusions are helpful but not particularly broad. For example, most existing CLOs will not qualify for the "loan securitization" exemption due to the inclusion of bonds or other securities in their asset pools, and there is no exemption for synthetic CLOs, resecuritizations or securitizations involving asset classes other than loans. There is also no exemption for municipal tender option bond programs as currently constructed. Entities caught in the definition of "covered funds" can attempt to restructure so as to rely on a different exemption from registration under the Investment Company Act, thus avoiding designation as a "covered fund," but this may not be possible for certain types of entities (and is probably not feasible for most existing entities).

If an entity is fortunate enough to avoid designation as a "covered fund," the covered fund rules will not apply to investments in or sponsorship of that fund by a banking entity, but such activities may still be subject to the proprietary trading provisions of the Rule discussed above. If an entity is designated as a "covered fund," a banking entity may hold debt issued by the entity (subject to the proprietary trading provisions of the Rule) so long as such debt does not constitute an "ownership interest" in the entity.

5 Excluding a fund that, if the issuer were subject to U.S. securities laws, could rely on an exclusion or exception to the Investment Company Act other than the 3(c)(1) or 3(c)(7) exclusions.

However, we note that the definition of "ownership interest" set forth in the Rule is quite broad; while an ownership interest obviously includes an equity or partnership interest, it also includes interests that are not obviously equity but have equity-like rights (such as the right to participate in the selection or removal of a general partner, managing member, investment advisor, or other similar party or the right to receive a share of income, profit or excess spread of the covered fund). This definition is likely to result in questions about whether particular types of securities constitute impermissible "ownership interests." We also note that no grandfathering is included in the Rule—if a banking entity owns a prohibited interest in a covered fund, it will need to divest the interest by July 21, 2015 (subject to extension of this date by the appropriate Agency).

PERMITTED SPONSORSHIP OR OWNERSHIP OF COVERED FUNDS

Even if an entity cannot escape being designated as a covered fund, in certain circumstances a banking entity may still own a portion of or sponsor such fund. The Volcker Rule generally permits a bank to invest in or sponsor[6] a covered fund in connection with:

(1) Generally organizing or offering a fund subject to several conditions, including among others:

    the banking entity or an affiliate thereof provides *bona fide* trust, fiduciary, investment advisory or commodity trading advisory services and the covered fund is organized and offered only in connection with the provision of such services; and

    the banking entity and its affiliates do not acquire or retain an ownership interest in the covered fund other than (i) to facilitate the establishment of the fund or (ii) subject to the per-fund and aggregate limits on covered fund investment by the banking entity and its affiliates (described below) and do not guarantee the obligations of the covered fund;

(2) Organizing and offering an issuing entity of asset backed securities (again subject to the ownership restrictions discussed below, among other requirements);

(3) Investments in covered funds for certain risk mitigating activities associated with compensation arrangements;

(4) Certain activities by non-U.S. banking entities occurring completely outside of the United States, and

(5) Certain insurance company activities.

The Volcker Rule permits a banking entity to invest in a covered fund that it organizes and offers as described in points 1 and 2 above for the purpose of funding the initial establishment of the fund. The banking entity may retain an interest in the fund beyond the one-year "seeding period" for a fund subject to (i) a per-fund limit of three percent of the outstanding ownership interests in the fund (or, in the case of asset-backed securities, such higher amount as required by the risk retention requirements of the Exchange Act) and (ii) an aggregate limit on the value of all covered ownership interests owned collectively by a banking entity and its affiliates of three percent of the banking entity's tier 1 capital. We note that with respect to asset-backed securities, only U.S. risk retention requirements are taken into account in determining the amount of the permissible investment, which could cause problems for multijurisdictional offerings that might need to comply with other risk retention regimes.

ADDITIONAL PROHIBITIONS ON INTERACTIONS WITH COVERED FUNDS

The Volcker Rule further generally provides that a banking entity that (i) serves as an investment manager, investment adviser, commodity trading advisor or sponsor to a covered fund, (ii) organizes and offers a covered fund, or (iii) continues to hold a permitted ownership interest in a covered fund (x) may not enter into a transaction with the covered fund (or other covered fund controlled by the covered fund) that would be a covered transaction as defined in section 23A of the Federal Reserve Act and (y) will be subject to section 23B of the Federal Reserve Act. Covered transactions, as defined Section 23A of the Federal Reserve Act, include loans and other extensions of credit to the covered fund, purchases of securities issued by the covered fund, purchases of assets from the covered fund, the issuance of a guarantee of the obligations of the covered fund (including

6 Sponsorship of a covered fund includes (i) acting as a general partner, managing member or trustee with respect to the fund, (ii) controlling a majority of the directors, trustees or management of a covered fund, or (iii) sharing with the covered fund the same name or a variation of the same name. Given that "sponsorship" is broadly defined, the Rule clarifies that banking entities may engage in underwriting activities, that is distribute, covered funds.

providing liquidity or credit enhancement) and certain other specified transactions. Section 23B requires that any transactions between the banking entity and the covered fund be on terms that are substantially the same as those prevailing for comparable transactions with nonaffiliated entities or that would be offered to nonaffiliated entities. Interactions with covered funds are also subject to a general rule against material conflicts of interest, exposure to high-risk assets or high-risk trading strategies, or threats to the financial stability of the banking entity or the U.S. that is similar to certain provisions applicable to proprietary trading.

COMPLIANCE

Compliance requirements in the Volcker Rule vary based upon a banking entity's asset size and volume of covered activities. Generally, the more substantial a banking entity's trading and fund activities are, the more extensive the entity's compliance program should be.

In order to reduce compliance burden, the Volcker Rule permits smaller, less complex banking entities with total consolidated assets of $10 billion or less that engage in covered proprietary trading and/or covered fund activities to implement a simplified compliance program that includes references to the requirements in the Dodd-Frank Act and the Volcker Rule in the entity's existing compliance policies as appropriate to the activities, size, scope and complexity of the entity. Those smaller, less complex banking entities that do not engage in any covered proprietary trading or covered fund activities - other than trading in exempt U.S. government or agency obligations and state and municipal obligations – are not required to establish a specific compliance program.

Larger banking entities with more than $10 billion in total assets must have a compliance program that includes the following requirements, at a minimum:

- written policies and procedures that provide trading and exposure limits
- internal controls
- a management framework that sets forth clear compliance responsibilities and accountability
- independent testing and audit
- training, and
- recordkeeping.

Additional compliance program and control requirements apply to banking entities that have significant trading or covered fund activities. These include a requirement for an annual, written attestation by the chief executive officer to the Agency with regulatory responsibility for that banking entity. The attestation must state that the banking entity has in place a compliance program that is reasonably designed to ensure compliance with the Volcker Rule provisions of the Dodd-Frank Act and the Rule itself. These additional requirements apply to any domestic banking entity with total consolidated assets of $50 billion or more and to any foreign banking entity that has U.S. assets of $50 billion or more for the preceding calendar year, including U.S. subsidiaries, affiliates, branches and agencies of the foreign banking organization.

The Volcker Rule also requires banking entities with significant trading operations to supply metrics reports to the Agency with regulatory responsibility for that banking entity. The metrics to be reported are:

- risk and position limits and usage
- risk factor sensitivities
- value at risk and stress value at risk
- comprehensive profit and loss attribution
- inventory turnover and aging, and
- customer-facing trade ratio.

The metrics reporting requirements in the Rule will apply on a graduated basis as follows:

- Beginning June 30, 2014, banking entities with $50 billion or greater in trading assets and liabilities are required to report quantitative metrics

- Beginning April 30, 2016, banking entities with at least $25 billion and less than $50 billion in trading assets and liabilities become subject to the metrics reporting requirement
- Beginning December 31, 2016, banking entities with at least $10 billion and less than $25 billion in trading assets or liabilities become subject to the metrics reporting requirement

The Agencies intend to review and revise the metrics if needed based on the data received by September 30, 2015.

INITIAL REACTIONS

The impact of the Volcker Rule will be significant and pervasive. Its impact will be felt well beyond banking entities. The Rule will have consequences for all U.S. financial markets and market participants. Some of those consequences will undoubtedly be unintended and may take several years to fully materialize. The agencies intend to work together regarding implementation of the rule and to provide guidance as appropriate.

Some of the effects of the Volcker Rule may potentially include:

- The Rule may result in reduced access to and availability of capital and to some of the financial instruments used for hedging risks. The cost of capital and the cost of engaging in hedging activities are likely to increase due to increased compliance burdens under the Rule, as well as increased capital charges for banking entities under related new capital rules.
- Banking entities may be forced to reduce their inventories of securities in order to comply with the proprietary trading prohibition. This could adversely affect the depth and liquidity of U.S. capital markets. Additionally, there could be an increase in bid/ask spreads for securities and a reduced ability to engage in block trading.
- Limitations on market making activities could limit access to less liquid investments or to assets with higher risk profiles. Less predictable access to certain securities could result in price uncertainty and increased volatility. Restricting market making to identifiable near term demand may particularly impact securities that do not regularly trade.
- Underwriting restrictions may be difficult to satisfy, particularly for non-equity issuances. The requirements relating to near-term demand may make it difficult for banks to purchase and hold securities in order to support price. Pricing for debt securities could increase in order to ensure full market absorption for new debt issuances.
- Restrictions on hedging activities may force banking entities to transfer risks to unregulated entities which may not have the capital or means to absorb losses or effectively manage those risks. Market participants may find it more difficult to hedge their risks to the extent that banks are less willing or unable to take the other side of positions typically used for hedging activities.
- The ability to access alternative forms of financing through securitization transactions, for example, may be greatly limited by the Volcker Rule's covered fund provisions, resulting in both increased costs for financing many business activities and a reduction to certain categories of investment assets. Securitization is an important source of funding to lease and finance companies and other companies that use receivables and income-producing assets for financing purposes, and allows banks to extend financing to additional homeowners.
- While they may not engage in proprietary trading or sponsoring funds, community banks will be adversely affected to the extent that they hold CLOs.[7]

7 On December 19, the banking agencies published "FAQ Regarding Collateralized Debt Obligations Backed by Trust Preferred Securities under the Final Volcker Rule" indicating that a sale of existing CLO and CDO holdings need not be made until July 21, 2015 to the extent such holdings are no longer permitted. Nonetheless, certain financial institutions are currently liquidating holdings or recognizing losses as a result of marking-to-market such holdings.

- The covered fund limitations may also restrict the ability of banks to participate in other financing activities such as tender option municipal bonds, which have been an important source of liquidity in the secondary market and have enhanced the availability of credit to state, county and municipal issuers.
- Like various other Dodd-Frank Act reforms, the Rule may balkanize the global markets and make accessing global capital markets more costly and difficult.

Compliance with the Volcker Rule will require large investments in people and processes. Financial transactions may be delayed and may fail to be completed to ensure compliance with the complex Volcker Rule provisions and will undoubtedly be more expensive. Banking entities, as well as participants in the markets, will all bear these costs and uncertainties.

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