2020 ABA Issue Summary

Volcker Rule

Contact: Ian McKendry, ABA Public Relations (202) 663-5473 or imckendry@aba.com

The Volcker Rule is a provision of the Dodd-Frank Act designed to limit trading and investment activities by banks. The regulation implementing the Volcker Rule became effective on April 1, 2014. Regulators are currently considering revisions to the Volcker Rule regulation.

- The Volcker Rule prohibits banks and their affiliates from engaging in proprietary trading (i.e. trading for their own account), with some exceptions for certain types of assets and certain categories of transactions.
- The rule also prohibits banks and affiliates from sponsoring/investing in hedge funds and private equity funds ("covered funds").
- In spite of nearly 1,000 pages of rules and explanatory text, the final rules do not clarify the parameters of permitted versus prohibited trading and investment activities. This has made compliance efforts daunting, time-consuming, and expensive.
- ABA advocated for, and the Federal Reserve granted in succession, three one-year reprieves (July 2014 – July 2017) for applying the Volcker Rule's requirements to bank legacy covered fund holdings. ABA also advocated for and won relief from the Federal Reserve in December 2016 regarding banks' holdings of long-term illiquid fund investments. The Federal Reserve allowed banks to apply to maintain these holdings for up to an additional five years.

The banking industry has significant concerns with the Volcker Rule.

- The final Volcker Rule was intended to apply only to the largest banks, but was originally applied to every bank, regardless of size or activity.
- With the exceptionally elusive task of defining, disentangling, and dissecting permissible from prohibited activities, banks continue to expend precious labor and resources puzzling through a highly complex and burdensome rule instead of serving their customers.
- It's still unclear which regulatory agency has the ultimate interpretative authority on the Volcker Rule, which continues to prove challenging for banks supervised by more than one agency.

Recognizing the significant compliance burden, Congress passed legislation in 2018 to exempt certain banks from the Volcker Rule and regulators have proposed to make the rule easier to understand which will also make it easier for banks to comply.

- In the bipartisan financial reform law that passed in 2018, Congress included a provision to exclude from the Volcker Rule any bank that (i) has no more than $10 billion in total assets, and (ii) is not controlled by a company that has more than $10 billion in total assets, and (iii) has total trading assets and trading liabilities of no more than five percent of total assets.
- The five agencies responsible for overseeing compliance with the Volcker Rule issued a proposal to modify the Volcker Rule in June 2018 and later extended the comment period until October 2018. Further action is expected on the proposal in 2019.