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News Bulletin

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Financial Stability Oversight Council Seeks Public Comments and Input for Volcker Rule Study and Recommendations

On Friday, October 1, 2010, the Financial Stability Oversight Council (FSOC) held its inaugural meeting at the U.S. Treasury Department in Washington, D.C. The FSOC, established under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), is charged with identifying threats to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States financial system. One of the FSOC's first steps was to approve and issue a Notice and Request for Information regarding the FSOC's "Volcker Rule" study and recommendations (NRI Volcker Rule).

Section 619 of the Dodd-Frank Act contains a prohibition against banking entities engaging in proprietary trading and against maintaining certain relationships with hedge funds and private equity funds. This section is commonly known as the Volcker Rule. In addition, Section 619 of the Dodd-Frank Act requires the FSOC to conduct a study and make recommendations on implementing the Volcker Rule; the other federal regulators, in particular the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), must consider the findings of the FSOC study in developing and adopting regulations to implement the Volcker Rule. The FSOC's study and recommendations must be completed by January 22, 2011, and submitted to Congress.

With the NRI Volcker Rule the FSOC seeks public comments on a variety of questions with regard to the Volcker Rule, in particular the following:

1. How can the Volcker Rule best (i) promote and enhance the safety and soundness of the banking system; (ii) protect taxpayers and consumers and enhance financial stability; (iii) limit the transfer of federal subsidies from institutions that benefit from deposit insurance and federal liquidity facilities to unregulated entities; (iv) reduce conflicts of interest between the self-interest of banking entities and nonbank financial entities supervised by the Board (NFCs) and the consumers' interests; (v) limit activities that can cause undue risk or loss in banking entities and NFCs; (vi) appropriately accommodate the business of insurance; and (vii) appropriately time the divestiture of illiquid assets that are affected by the Volcker Rule?

2. What are the key factors and considerations that should be taken into account in implementing the proprietary trading provisions under the Volcker Rule?

3. What are the key factors and considerations that should be taken into account in implementing the provisions of the Volcker Rule that restrict the ability of banking entities to invest in, sponsor, or have certain other relationships with private equity and hedge funds?

4. What factors and considerations should inform decisions on various definitions under the Volcker Rule (*e.g.*, banking entity; hedge fund; private equity fund; such similar funds; proprietary trading; etc.)?

5. What factors and considerations should be taken into account as indicative that a transaction or an activity would involve or result in a material conflict of interest between the banking entity or an NFC and its clients, customers, or counterparties; would result in a material exposure by a banking entity or an NFC to high-risk assets or trading strategies; or would pose a threat to the safety and soundness of a banking entity or an NFC?

6. What factors and consideration should be taken into account in making recommendations with regard to additional capital and quantitative limitations when engaging in activities permitted under the Volcker Rule?

7. What practices, types of transactions, or corporate structures in general have historically accounted for or involved increased risks or may account for or involve increased risks in the future?

8. What practices, policies, or procedures have historically been utilized that may have mitigated or exacerbated risks or losses and what practices, policies, or procedures might be useful in limiting undue risk or loss in the future?

9. What factors and recommendations should be taken into account in making recommendations to safeguard against evasion of the Volcker Rule?

10. How should the international context be considered when implementing the Volcker Rule (in particular with regard to banking entities and NFCs that operate outside of the United States and domestic banking entities that have access to foreign exchanges, foreign affiliates of domestic banking entities, and foreign nonbank financial companies)?

11. What timing issues are raised in connection with the divestiture of illiquid assets affected by the Volcker Rule?

The NRI Volcker Rule is published in the Federal Register dated October 6, 2010, and the public will have 30 days to submit comments from the date of publication.

This provides an opportunity for banking entities and NFCs that may be significantly affected by the Volcker Rule to help shape the regulators' early thinking about how this provision should be implemented.

NOTE: The entire NRI Volcker Rule can be found on the FSOC's new website at: http://www.treas.gov/FSOC/docs/2010-25320_PI.pdf.

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