

Final Volcker Regulations Ease Mutual Fund Concerns

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Adopted in December 2013, the final interagency rulemaking to implement the Volcker Rule resolves a number of concerns raised by the mutual fund industry. Under the Volcker Rule, banking entities are generally prohibited from engaging in proprietary trading or investing in or sponsoring certain types of investment funds. Such "covered funds," as the regulations call them, generally include any issuer that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Investment Company Act, as well as certain commodity pools. By expressly excluding registered investment companies from the definition of a covered fund, the final regulations clarify that a registered investment company will not be treated as a covered fund even if the company is also considered a commodity pool. This benefits certain registered investment companies that use futures, swaps, or other commodity interests in their investment programs. The final regulations also address the problem that could arise for an issuer that is reasonably expected to become a registered investment company, but during its "seeding" period relies on Section 3(c)(1) or 3(c)(7). Specifically, the regulations also exclude such seeding vehicles from the definition of a covered fund, subject to certain conditions designed to prevent evasion of the general prohibitions on covered fund activities. In addition, the final regulations make clear that **the Volcker Rule generally will not affect the ability of registered investment companies to invest in a covered fund, unless the registered investment company is itself a banking entity by virtue of being an affiliate of an insured depository institution.** In this regard, the adopting release discusses in some detail the considerable extent to which a banking entity may invest in or maintain certain relationships (for instance, as an adviser or organizer, sponsor, and manager) with a registered investment company without the Volcker Rule prohibiting the company's investment in any covered fund.

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