

Volcker Agencies Implement Small-Bank Exclusion and Name-Sharing Provisions of EGRRCPA

July 17, 2019

The Volcker Agencies¹ adopted [final amendments](#) implementing the small-bank exclusion and name-sharing provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act (**EGRRCPA**). Section 203 of EGRRCPA amended Section 13 of the Bank Holding Company Act (otherwise known as the **Volcker Rule**) to exclude certain small banks and their affiliates from the term “banking entity” and thus the restrictions on proprietary trading and on sponsoring, investing in or having certain relationships with hedge funds or private equity funds (**Covered Funds**). Section 204 of EGRRCPA amended the Volcker Rule to permit a Covered Fund to share the same name or variation of the same name in certain circumstances with a banking entity that acts as an investment adviser to the fund.

Small-Bank Exclusion

The final amendments modify the definition of “insured depository institution” in the existing regulations implementing the Volcker Rule to exclude an insured depository institution if it satisfies two conditions: (1) the insured depository institution, and every entity that directly or indirectly controls it, has total consolidated assets equal to or less than \$10 billion, and (2) the total consolidated trading assets and liabilities of the insured depository institution, and every entity that controls it, is equal to or less than five percent of its total consolidated assets.²

The Agencies clarified in the preamble to the amendments that a bank, savings association or banking organization may use its most recent Consolidated Report of Income (also known as a call report) or FR Y-9C filing, as applicable, as its source of data for its consolidated assets and its total trading assets and liabilities for the purposes of determining its eligibility for the small-bank exclusion.

Modification of Name-Sharing Restriction

The final amendments also permit a Covered Fund to share the same name or variation of the same name with a banking entity in certain circumstances. Specifically, the final amendments modify the name-sharing restriction in the so-called “asset management exemption” to permit a Covered Fund to share the same name or variation of the same name with a banking entity that is an investment adviser to the fund, so long as (1) the investment adviser is not, and does not share the same name or a variation of the same name as, an insured depository institution, a company that controls an insured depository institution

¹ That is, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission and the Commodity Futures Trading Commission (the **Agencies**).

² The Agencies considered and rejected the argument made by some commenters that Section 203 of EGRRCPA excludes any insured depository institution that satisfies either condition—i.e., has \$10 billion or less in total consolidated assets or trading assets and liabilities equal to or less than five percent of total consolidated assets. In rejecting this argument, the Agencies noted that Section 203 of EGRRCPA is titled “Community bank relief” and stated that their approach “is most consistent with the statutory language of EGRRCPA, the congressional intent behind the statute, and the structure of the statute as a whole.” The Agencies also considered and rejected a request for relief from the Volcker Rule for companies that control industrial loan companies, stating that they found no support for a specific exemption for investors in industrial loan company parents under EGRRCPA.

or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and (2) the investment adviser's name does not contain the word "bank."

The final amendments also make conforming changes to the definition of "sponsor" to reflect the statutory change to the name-sharing restriction under the asset management exemption. As a result of this change, a banking entity would still be a sponsor of a Covered Fund if that banking entity shares the same name or a variation of the same name with a covered fund for corporate, marketing, promotional or other purposes, except as permitted by the modified name-sharing restriction.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Randall D. Guynn	+1 212 450 4239	randall.guynn@davispolk.com
Jai R. Massari	+1 202 962 7062	jai.massari@davispolk.com
Christopher M. Paridon	+1 202 962 7135	chris.paridon@davispolk.com
Nuveen Dhingra	+1 212 450 4261	nuveen.dhingra@davispolk.com

© 2019 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.