

More Criticism of the Volcker Rule

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On Friday, in response to a question after delivering a speech, Fed Governor Jay Powell criticized the proprietary trading restrictions of the Volcker Rule. He was quoted in the press as stating that, “What the current law and rule do is effectively force you to look into the mind and heart of every trader or every trade to see what intent is. Is it proprietary trading or something else? If this is the test you set for yourself, you are going to wind up with tremendous expense and burden.” Governor Powell’s unscripted criticism is a vivid reminder that the Volcker Rule has been problematic since its inception and was not initially supported by the regulators. Indeed, even Paul Volcker has remarked, in effect, that the regulations are far too complex.

We think that Governor Powell is right that the intent-based focus in the proprietary trading portions of the Volcker Rule is a fundamental flaw; discerning intent in a complex, rapid trading environment is effectively impossible. We, and many others, have always worried that an intent-based approach, impossible to objectively measure, would chill the legitimate liquidity-providing activities of banking organizations expressly permitted by the statutory Volcker Rule—an intuition that has been rigorously evidenced by a recent Fed Staff paper, described in our recent blog post [here](#). We sincerely hope that Governor Powell’s remarks presage a thoughtful policy discussion, informed by actual experience with the proprietary trading provisions of the Volcker Rule, in the months to come. We also hope that there will be more focus on the capricious complexity of the funds side of the Volcker Rule as well.

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

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