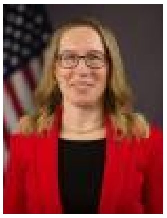
Public Statement

Statement at Open Meeting on Amendments to the Volcker Rule



Commissioner Hester M. Peirce

June 5, 2018

My views on the Volcker Rule are no secret.[1] Although I share the concerns that led to the enactment of this provision of the Dodd-Frank Act—that taxpayers should not be required to subsidize banks' proprietary trading—I believe that the Volcker Rule is an unwieldy tool for addressing these concerns. It attempts to distinguish prohibited proprietary trading from permitted market-making and hedging activity, but because the differences between these activities are exceedingly fine, the regulatory framework is exceedingly complex. It imposes detailed and highly technical restrictions on the activity of banking entities that pose significant and expensive compliance challenges for these entities.

The immense administrative complexities involved in complying with the rule discourage banking entities from engaging in market-making and hedging activity as these entities naturally shy away from activities that are permitted under the law but that may be difficult to distinguish from prohibited activity to a skeptical regulator scrutinizing the activity in hindsight. In the bullish market that has prevailed since the Commission, the CFTC, and the federal banking regulators finalized our regulations implementing the Volcker Rule, the costs of this over-deterrence may be difficult to identify. But market-making is essential to the healthy functioning of our financial markets and the broader economy, and hedging is central to a banking entity's prudent risk management, particularly in times of market stress. I worry that it is precisely during a period of significant market stress that we may fully come to appreciate the downsides of increasing the legal risk for companies engaging in these activities.

In addition to directly deterring critically important economic activities, the substantive complexity of the Volcker Rule imposes significant compliance costs on bank-affiliated broker-dealers and investment advisers, forcing them to divert resources away from more productive activities. Frédéric Bastiat, the French economist, notes in a famous essay that laws produce a series of effects: The first, and intended, effect is apparent even to the incompetent analyst—this is what is seen; but the most important effects are not seen, unless we make an effort to foresee them.[2] In the case of Volcker, what was readily seen by just about everyone is that firms would be required to spend significant amounts of money to comply with Volcker; what was not seen—and thus not properly accounted for—is the missed opportunity for investments in other areas that might have produced real innovations in meeting customer needs, protecting firms from cyberattacks, and complying with other rules that actually protect our investors and markets.

The Dodd-Frank Act constrains our ability to explore alternatives to the Volcker Rule, and it is unlikely that we will see the repeal of the Volcker Act at any time in the reasonably near future. Instead, we must strive to make it less harmful. I am happy, therefore, to have the opportunity to consider this recommendation for streamlining some of the rule's requirements that is before the Commission today. Although it does not fully resolve any of my fundamental concerns about the Volcker Rule, it does in many ways seek to ameliorate the negative effects of the rule. It proposes tailoring some of the requirements to account for the volume of a firm's trading activity and seeks to mitigate some of the adverse effects on bank-affiliated broker-dealers and investment advisers.

These are important improvements to the Volcker Rule that I am pleased to support. At the same time, however, the proposal significantly modifies the metrics-reporting requirements for banking entities involved in underwriting and market making, and in some cases seems to require these firms to report additional metrics that may represent a significant increase in the reporting burdens for such firms. In fact, I find it hard to reconcile the tone or substance of the first half of the release, with its focus on streamlining the rule's substantive requirements to reduce banking entities' compliance burdens, with the second half of the release, which seems to impose significantly more burdensome reporting requirements for market-making and underwriting activities that appear to fall disproportionately on SEC-regulated banking entities. Moreover, many of these additional requirements lack adequate justification: The release often fails to explain why the data is necessary (as opposed to merely convenient and potentially interesting for the regulator), how the data will be used, and whether the benefits of having the data available to the regulator warrant the expense of requiring the data to be reported.

Notwithstanding these concerns, I do support today's recommendation. The proposed substantive amendments reflect a serious attempt to grapple with some of the challenges that the Volcker Rule presents to banking entities. Now that the rule has been in effect for some time, it is critical that the Commission and other agencies have the opportunity to receive frank input from the public. The release solicits this input through requests for comment that span a wide range of issues raised by the proposed amendments, including through questions about the burden of our current and proposed reporting requirements and the usefulness of the various metrics.

I would particularly encourage bank-affiliated broker-dealers engaged in market-making and underwriting activity to provide the Commission and our fellow regulatory agencies with a detailed assessment of the costs imposed by our current reporting regime, as well as the likely costs that would arise under the proposed amendments to the metrics-reporting requirements.

In closing, I would like to express my heartfelt thanks to the staff in the Divisions of Trading and Markets and Investment Management, along with the Office of General Counsel and DERA, for their hard work on this release over a short, but very intense, timeframe. I appreciate your responsiveness to my many questions about the proposal, and particularly to my questions in connection with the metrics-reporting requirements.

Thank you.

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[1] Hester Peirce and Robert Greene, "Rethinking the Volcker Rule," Mercatus on Policy (Jan. 15, 2013), *available at* https://www.mercatus.org/publication/rethinking-volcker-rule

[2] Frédéric Bastiat, *Selected Essays on Political Economy*, trans. Seymour Cain, Library of Economics and Liberty (1995). *Available at* http://www.econlib.org/library/Bastiat/basEss1.html