

# The Federal Reserve Issues Volcker Rule Conformance Clarification

On Thursday, April 19, 2012, the Federal Reserve Board issued a policy statement clarifying the manner in which the Volcker Rule prohibitions would apply and would be enforced during the statutory two-year Conformance Period. Despite public statements by Ben Bernanke, the Chairman of the Federal Reserve Board, and others concerning the regulators' expectations with respect to compliance with the Volcker Rule upon its effectiveness, such expectations remained largely shrouded in mystery. The guidance now provided by the Federal Reserve is a welcome formal statement that does provide a useful indication of the regulators' expectations during the Conformance Period. As discussed below, the regulators will generally expect "good-faith" compliance efforts to be made during the Conformance Period.

Codified as section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), the Volcker Rule generally prohibits banking organizations from conducting proprietary trading and from sponsoring or acquiring an interest in a hedge fund or a private equity fund. The effective date of the Volcker Rule is July 21, 2012. The Dodd-Frank Act provides for a transition period of two years, until July 21, 2014, however, during which covered banking entities must conform their activities to the requirements of the Volcker Rule (the "**Conformance Period**"). The Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Commodity Futures Trading Commission have published proposed regulations implementing the Volcker Rule, but these regulations have yet to be finalized.

With the effective date of the Volcker Rule fast approaching, in the absence of final implementing regulations, covered banking entities faced daunting uncertainty about what compliance steps the regulators would expect as of the effective date of the Volcker Rule and during the Conformance Period. The policy statement has clarified that the regulators would not expect a covered banking entity to comply with the Volcker Rule and to have in place fully developed policies and procedures as of the effective date of the rule. The policy statement confirms that covered banking entities will have the full two-year Conformance Period provided by the statute to fully conform their activities and investments, unless the Federal Reserve extends the Conformance Period.

The policy statement further indicates that during the Conformance Period covered banking entities will be expected to engage in good-faith efforts appropriate for their activities and investments, that will result in the conformance of all of their activities and investments to the requirements of the Volcker Rule by no later than the end of the Conformance Period. The Federal Reserve has indicated that such good-faith efforts must take into account the statutory

provisions of the Volcker Rule and any applicable final implementing regulations and include: (i) evaluating the extent to which the covered banking entity engages in activities and investments that are covered by the Volcker Rule; and (ii) developing and implementing a conformance plan that is as specific as possible. Notably, the Federal Reserve's statements imply that the good faith compliance efforts need not take into account the provisions of the proposed implementing regulations. The Federal Reserve has also indicated that the good-faith conformance efforts may also include complying with reporting and recordkeeping requirements if such elements are included in the final Volcker Rule implementing regulations and the regulators specifically determine that such actions are required during the Conformance Period.

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