



# Regulatory Alert

Financial Services Regulatory Insight Center



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## Agencies propose to simplify Volcker Rule compliance

### Key points

- Five federal financial regulatory agencies jointly released proposed rules that would amend the Volcker Rule
- The amendments would maintain the core principles of the Rule, including the statutory prohibitions on proprietary trading and restrictions on relationships with covered funds, but would set compliance requirements to the size and complexity of a banking entity's trading activity.

### Summary

Five federal financial regulatory agencies have jointly [proposed](#) amendments to the regulations implementing Section 619 of the Dodd-Frank Act, commonly referred to as the "Volcker Rule."

In general, the Volcker Rule prohibits banking entities from engaging in proprietary trading and from owning or controlling hedge funds or private equity funds, subject to certain exemptions. Based on their experience since adopting the regulations in 2013, the agencies state that the implementing regulations "may have resulted in ambiguities, overbroad application, or unduly complex compliance routines." In response, they are proposing to provide banking entities with greater clarity on the activities that are prohibited.

Highlights of the proposed amendments would:

- Tailor the Rule's compliance requirements to the size and scope of a banking entity's trading assets and liabilities (not including trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States). Three new categories would be created based on the consolidated trading assets and liabilities of a banking entity and its affiliates and subsidiaries:

1. **Significant:** Equal to or in excess of \$10 billion. Estimated to cover 95 percent of the trading assets and liabilities in the U.S. banking system. (Note: For foreign banking entities, this threshold would apply to the trading assets and liabilities of their consolidated U.S. operations.)
2. **Moderate:** Less than \$10 billion but more than \$1 billion. Estimated to cover 3 percent of the trading assets and liabilities in the U.S. banking system.
3. **Limited:** Less than \$1 billion. (Note: Calculated using worldwide trading assets and liabilities for both domestic and foreign banking entities.)

"Significant" banking entities would be required to establish a compliance program to meet requirements outlined in the proposal. "Limited" banking entities would be presumed to be in compliance with the Rule and would not be required to adopt a Volcker Rule compliance program. The CEO attestation requirement would be retained for banking entities in the "Significant" and "Moderate" categories.

- Revise the definition of "trading account," by removing the short-term intent prong and eliminating the 60-day rebuttable presumption, and replacing them with an accounting prong



- Establish a presumption that trading within internally set risk limits is permissible market making or underwriting activity
- Streamline the criteria for relying on the hedging exemption
- Limit the impact of the Rule on the foreign trading activity of foreign banking entities by permitting trades to be conducted with or through a U.S. entity and U.S. personnel to arrange or negotiate transactions
- Simplify the trading activity information that banking entities are required to provide to the agencies.

Regardless of the trading activities category, the proposal would also provide each of the agencies a reservation of authority to allow for “the size or complexity of the banking entity’s trading or investment activities, or the risk of evasion.”

A total of 342 separate questions are included in the proposed rule. Comments will be accepted by each of the five federal financial regulatory agencies for a period of sixty days following publication in the Federal Register.

### Related actions

- Randall Quarles, Federal Reserve Board Vice Chairman for Supervision, stated “this proposal represents our best *first* effort at simplifying and tailoring the Volcker rule.”
- The Economic Growth, Regulatory Reform, and Consumer Protection Act made changes to the statutory Volcker Rule provisions, including narrowing the definition of a banking entity by exempting community banks—firms with less than \$10 billion in total consolidated assets and with total trading assets and liabilities that are not more than five percent of total consolidated assets—from the Volcker Rule restrictions. These changes will be made in a separate rulemaking.

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