Regulation Review

Final Volcker Rule

SAM BATKINS | DECEMBER 11, 2013

Despite the weather-induced closure of most of the Federal government, five agencies were able to ratify the final version of perhaps the most anticipated Dodd-Frank regulation. The rule regarding “Prohibitions and Restrictions on Proprietary Trading,” known more colloquially as the

“Volcker Rule,” is a joint rulemaking between the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve, Commodity Futures Trading Commission (CFTC), and Securities and Exchange Commission (SEC). The rule limits the ability of depository institutions to make short-term trades on their own capital with securities and derivatives. With the rule’s preamble explaining its development and the actual regulatory text, the pre-publication version is 963 pages.

There are notable differences between the proposed and final versions of the rule. The final rule does exempt certain smaller entities that do not heavily engage in proprietary trading from much of the compliance regime. According to the rule’s Paperwork Reduction Act analysis, the total burden falls from more than 6.5 million hours of paperwork to nearly 2.4 million hours. Although it is a stark reduction, it is still the fifth most burdensome Dodd-Frank rule to-date.

In reviewing analyses in the rulemaking, there are other notable points. Considering that the final version did provide relief for certain smaller institutions, it is hardly surprising that the various agencies declare that it would not have a “significant economic impact on a substantial amount of small entities.” However, it is somewhat surprising to find that, in OCC’s analysis required by the Unfunded Mandates Reform Act (UMRA): “The final rule qualifies as a significant regulatory action under the UMRA because its Federal mandates may result in expenditures by the private sector in excess of $100 million.” The proposed version had no real, quantified costs estimates. Considering that some outside estimates put the rule’s costs in the billions, it is important to note that one of the authoring agencies tagged it with this designation.

OCC is not the only agency bringing new revelations about the rule’s development. One of the CFTC Commissioners, Scott O’Malia, noted a number of procedural and legal concerns in his dissenting vote. On the procedural side, O’Malia is concerned at how he and his fellow Commissioners only received a draft to review within days of the scheduled vote. On the legal side, he argues that due to the rule’s multi-agency approach and its complexity, there will likely be serious jurisdictional issues that could potentially affect a market participant’s right to due process.

The rule has been under development for roughly three years. It has gathered a strong degree of scrutiny as many expect it will fundamentally change the ability to raise capital. As such, there have been some notable changes to the rule’s structure, but it is clear that it remains one of the financial reform law’s most consequential rulemakings.