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Volcker Rule Reform—Is There Any There, There?

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There has been substantial physical and virtual ink spilled over recent financial regulatory announcements about a review of the Volcker Rule—the controversial Dodd-Frank Act provision that generally prohibits proprietary trading and private investment fund sponsorship/investment by covered banking organizations. But will these agency activities lead to any change? In our view, they may lead to some minor changes, but no major ones.

The recent regulatory actions include a joint federal banking agency release announcing that the five federal financial regulatory agencies that administer the Volcker Rule (the Agencies) will review the applicability of the Volcker Rule to certain types of foreign investment funds, followed by a later [announcement](#) by the Office of the Comptroller of the Currency (OCC) requesting comments on possible regulatory changes to the Volcker Rule. These initiatives occur against the backdrop of a congressional proposal (embodied in the Financial CHOICE Act passed earlier this summer by the US House of Representatives) to repeal the Volcker Rule outright, a US Treasury Department financial reform [report](#) recommending multiple deregulatory changes to the rule, and June 2017 congressional [testimony](#) by Federal Reserve Board Governor Jerome Powell supporting changes that would clarify and tailor the applicability of the rule to banking organizations.

For those who question the necessity or utility of the Volcker Rule—and we are among those who do—all this regulatory activity is encouraging. Whether it will result in material changes, however, is another question. The Agencies' joint review of how the Volcker Rule applies to “foreign excluded funds,” for example, is welcome and probably overdue given the multiple unforeseen and generally unnecessary complications that the Agencies' Volcker Rule regulations have created for such funds. This joint review also stands the best chance of leading to changes because all of the Agencies have agreed to the review, and the targeted burden-reducing modifications that may result are unlikely to offend any major regulatory, legislative, or public constituencies. On the other hand, the OCC's unilateral Volcker Rule initiative, which flies in the face of the fact that all five Agencies must agree to any regulatory modifications, has some of the appearance of tilting at windmills and is less likely to result in material changes.

Takeaways

Although there is an appetite at some of the Agencies for Volcker Rule modifications, the interagency administrative framework that requires Agency unanimity for regulatory changes is highly cumbersome and will get in the way of material changes at the administrative agency level. Thus, while the Agencies' willingness to explore the Volcker Rule issue is welcome, it is not likely to result in major modifications. Changes of that kind more logically should occur at the congressional level, and there is some bipartisan recognition that a deregulatory fine-tuning of the Volcker Rule may be in order. However, whether such action is possible in the current political environment is anybody's guess.

Gertrude Stein's oft-quoted and oft-misunderstood reference^[1] to a certain American city, which we recast for the title of this post, is an apt theme for the current Volcker Rule reform effort. Only time will tell whether there's truly any there, there.

[1] Stein, *Everybody's Autobiography* (1937).

Morgan Lewis

Article By [Melissa R. H. Hall](#)
[Charles M. Horn](#)
[Morgan, Lewis & Bockius LLP](#)
[All Things FinReg](#)
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