

MEMO# 31276

July 6, 2018

Recap of June 28 Discussion Regarding Volcker Rule NPR; Preliminary Approach to ICI Letter and Next Steps

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July 6, 2018 TO: Bank-Affiliated Member Advisory Committee RE: Recap of June 28 Discussion Regarding Volcker Rule NPR; Preliminary Approach to ICI Letter and Next Steps

This memorandum provides a brief recap of key points from the discussion at the Committee's June 28 meeting regarding the agencies' proposal (NPR) to revise the Volcker Rule implementing regulations.[\[1\]](#) It also outlines the approach that we expect to follow in drafting ICI's comment letter on the NPR and identifies other next steps.

Key Points from the Committee Discussion

- The NPR does not include proposed changes to the covered fund provisions because staff of the agencies could not reach agreement and were working on an expedited timetable. Attendees suggested that the staffs appear to be more comfortable making changes to the proprietary trading provisions (as opposed to the covered fund provisions) of the implementing regulations.
- Language in the preamble suggests that the agencies would find it difficult to provide carve-outs from the definition of "banking entity" (as ICI previously has recommended for US registered investment companies and foreign public funds).
- The agencies may be looking to adopt some Volcker Rule revisions by year end.
- Attendees voiced concerns about the agencies "getting it wrong" in their efforts to fix the Volcker Rule. Some pointed to the NPR's proposed accounting test as an example of an attempt to fix problems with the current definition of "trading account" that instead appears to create new problems.
- ICI's submission to the agencies in May[\[2\]](#) is not part of this rulemaking record, so ICI's comment letter will need to cover any points from that submission that we wish to reiterate. The same is true for ICI's comment letter to the OCC in September 2017.[\[3\]](#)

Preliminary approach to ICI comment letter

Based on the Committee discussion, we expect the ICI letter to address the four areas outlined below.

1. Regulated funds as banking entities:

- a. Ask that the agencies reaffirm the very helpful language in the preamble regarding the scope of FAQ 16 on seeding
 - b. In response to question 15 in the NPR, ask the agencies to provide additional guidance to resolve “middle and end of life” issues for regulated funds (in other words, situations such as a large redemption or winding down of a fund that could result in the fund’s sponsor temporarily owning more than 25% of the fund’s shares)
 - c. Note that the above actions should address “banking entity” concerns for regulated funds but suggest that the agencies provide certainty through changes to the regulations. Recommend that the agencies add exclusions to the proprietary trading and covered funds prohibitions for the activities of regulated funds during a seeding period and other temporary instances of control (as outlined in footnote 1 in ICI’s May submission).
2. Foreign public funds: recommend that the FPF exclusion be simplified, as outlined in ICI’s May submission
 3. Proposed accounting test (part of revised “trading account” definition): brief discussion, noting how this test would apply to the bank’s seeding of regulated funds. ICI’s comments would be in line with those of other trade associations
 4. Market impacts: short discussion of this topic, as was done in ICI’s letter to the OCC

Next steps

ICI intends to engage with staff at the agencies in hopes of getting their reactions to our May submission and learning what we can about their plans for addressing fund issues. A meeting with staff at the FDIC would be our first since the appointment of Chairman Jelena McWilliams, so we would expect that meeting to involve an educational component as well.

We also will engage with counterparts at other trade associations and encourage them to support ICI’s proposal to revise the foreign public fund definition.

We will schedule a committee call in late July or early/mid-August to provide an update and get additional member feedback on ICI’s comment letter.

In the meantime, we invite members to provide us with any further input on the topics set forth in the discussion outline for the June 28 meeting[\[4\]](#) or on the fund-related questions in the NPR, which are provided in the attachment to this memorandum.

We anticipate circulating a draft of ICI’s comment letter in late August/early September, depending upon the deadline for comments (which has yet to be determined).

Rachel H. Graham
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[Attachment](#)

endnotes

[1] For more information on the NPR, see ICI [Memorandum No. 31261](#) (June 26, 2018).

[2] See ICI [Memorandum No. 31220](#) (May 24, 2018).

[3] See [ICI Memorandum No. 30882](#) (Sept. 21, 2017).

[4] The discussion outline can be found behind Tab 3 of the June meeting materials, available on the Committee page at https://www.ici.org/committees/bank_affiliated_member_advisory/doc/2018.

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