

VIDEO

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Focus on Funds: A Regulatory Headache for Funds and Investors Could Be Easing

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Financial regulatory agencies are looking to improve the Volcker Rule, a Dodd-Frank provision that has inadvertently affected fund managers. In the March 2, 2018, edition of *Focus on Funds*, ICI Chief Counsel Susan Olson discusses how this could affect US and global funds.

Transcript

Stephanie Ortvals-Tibbs, ICI director, media relations: For years, mutual funds in and outside of the United States have suffered from a headache called the Volcker Rule. It's a section of the Dodd-Frank Act that wasn't intended to apply to mutual funds, and yet for years ambiguities and complexities have dogged these funds and their efforts to comply. That's why it's exciting that regulators are taking a new look at this rule and considering ways that they could clear up the confusion, as I learned from ICI General Counsel Susan Olson.

Susan Olson, ICI general counsel: The Volcker Rule had a very straightforward concept—to limit banks' investments and sponsorship of hedge funds. So mutual funds did not expect to be impacted, but they have been.

Ortvals-Tibbs: And this not only affected them, but it ended up creating rules that came out of five regulators?

Olson: Yes, it was a very complicated rulemaking. So you have five different agencies working on this rule, and it was a very difficult task. It's been implemented, and there have been different phase-ins of the implementation of the rule. Funds have adapted, but there are still challenges. It's quite complex.

Ortvals-Tibbs: One of the things that is heartening, though, is that all of the regulators now seem to want to relook at this issue.

Olson: Yes, the Treasury Department has encouraged the agencies to take a look at how

they can improve the rule. And also, the Office of the Comptroller of the Currency actually asked for comments on how to improve the rule over the summer. So there is a lot of good information now to help the agencies start looking at the rule.

Ortbals-Tibbs: With this momentum behind this relook, and this reconsideration that might help mutual funds, what do we think would be most helpful for funds and their investors?

Olson: They're really very focused changes. If we could have the definition of "banking entity" expressed express exclude registered investment companies, or mutual funds, it would be exceptionally helpful to funds and their investors, to just have that certainty.

Ortbals-Tibbs: And it's not only US funds that could really use some assistance here, but global funds.

Olson: That's exactly right. So, foreign mutual funds also have the same challenges with that definition of "banking entity." So again, it's important for them to have that kind of help. The certainty is just very, very important to these sponsors of funds.

Ortbals-Tibbs: Now, one thing people might say is, "Well, this is just kind of a regulation. It's just kind of another rule on the books, what does it really matter?" But this does have capital markets implications.

Olson: It absolutely causes managers to have to invest in a lot of policies and procedures that add a lot of complexity, in order to run these funds and make sure that they don't run afoul of these rules. If a mutual fund inadvertently is within the definition of banking entity, it then is subject to the Volcker Rule's restrictions on buying and selling securities, which is just a completely untenable result.

Ortbals-Tibbs: And it's not just complicated, it's costly.

Olson: Absolutely.

Ortbals-Tibbs: And somebody's got to pick that up. And it's ultimately the investor.

Olson: That's exactly right, but it's hard on the regulators, too. I think they realize that it's a difficult rule to actually enforce and to oversee for compliance purposes. So we think it's in everyone's interest to sort of simplify the rule.

Ortbals-Tibbs: So, as they look at right-sizing this rule, this is also really a classic example of how ICI's policy experts in the Law department are working on an issue that crosses borders.

Olson: We do. We have to look at the extraterritorial impact of rules. And we also look at how other jurisdictions are approaching rules. But I'd also say that we've had to go cross-sector in some ways, to understand banking rules—because we have to understand how the banking regulators are also trying to tackle a problem, and how that brings in funds.

Additional Resources

- [Congressional Testimony: Examining the Impact of the Volcker Rule on the Markets, Businesses, Investors, and Job Creators](#)
- [Comment Letter: ICI Sends Letter to US Federal Reserve Board Urging Immediate](#)

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