COMMUNITY BANK EXCLUSION FROM VOLCKER RULE

The federal banking agencies recently adopted a final rule to exclude community banks from the Volcker Rule, consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act.

The Volcker Rule generally restricts banking entities from engaging in proprietary trading and from owning, sponsoring, or having certain relationships with hedge funds or private equity funds. Under the final rule, community banks with $10 billion or less in total consolidated assets and total trading assets and liabilities of 5 percent or less of total consolidated assets are excluded from the Volcker Rule. The Agencies specifically clarified that either quarterly call reports or FR Y-9C filings (depending on the entity involved) may be used to determine whether the 5 percent trading assets and liabilities threshold has been met. This means that the normal mechanisms employed to determine the amount of trading assets and liabilities for call report purposes also apply for purposes of demonstrating compliance with the 5 percent threshold.

The final rule also permits a hedge fund or private equity fund, under certain circumstances, to share the same name or a variation of the same name with an investment advisor as long as the advisor is not an insured depository institution, a company that controls an insured depository institution, or a bank holding company.

Specifically, banking entities may share their names with covered funds if: (1) the banking entity in question is an investment advisor to the fund; (2) the banking entity is not an insured depository institution, a company that controls a depository institution, such as a bank holding company or a foreign banking organization treated as a bank holding company for purposes of the International Banking Act of 1978; (3) the banking entity does not share its name or a variation thereof with an insured depository institution, bank holding company or foreign banking organization; and (4) the banking entity’s name does not include the word “bank.”

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.