VOLCKER RULE FINALIZED

On December 10, 2013 the FRB, OCC, FDIC, together with the SEC and the Commodity Futures Trading Commission, adopted final rules implementing Section 619 of the Dodd-Frank Reform Act – commonly referred to as the "Volcker Rule." The regulations become effective April 1, 2014. The regulations extend the deadline for conforming current activities with the requirements of the statute and the regulations to July 21, 2015.

The Volcker Rule prohibits banking entities, including bank holding companies and their subsidiaries and affiliates, from engaging in the following activities:

- "Proprietary trading" – which essentially means trading securities, derivatives or commodities contracts for the financial institution's own account; and

- Sponsoring or investing in private equity or hedge funds for the institution's own account, or extending credit to affiliated private equity or hedge funds, including commodity pools.

However, the agencies have adopted certain exceptions to these general prohibitions. Specifically, the following activities, among others, are exempt:

- Trading in certain government obligations. The specific instruments covered by this exemption include: (i) obligations of, or issued or guaranteed by, the U.S.; (ii) obligations, participations or other instruments issued or guaranteed by a U.S. government agency, Ginnie Mae, Fannie Mae, Freddie Mac, Federal Home Loan Bank, among others; (iii) state or municipal bonds or other obligations; and (iv) an obligation of the FDIC or an entity formed by or on behalf of the FDIC either in its corporate capacity to dispose of assets acquired by the FDIC or as conservator or receiver;

- To satisfy a debt previously contracted;

- Trading as part of a liquidity management program subject to specified conditions;

Copyright © 2014
Aldrich Bonnefin & Moore, PLC
All Rights Reserved

18500 von karman avenue, suite 300, irvine, california 92612
phone: (800) 742-3600 • fax: (949) 474-0617
email: bcg@abmlawfirm.com • website: www.bankerscompliancegroup.com

- Trading financial instruments for the account of, or on behalf of a customer, when a bank is acting as trustee or other fiduciary and provided it does not have or retain any beneficial ownership of the instruments;

- Repurchase and securities lending agreements; and,

- Trading to hedge against specific risks. In particular, this exemption would apply to hedging activity that is designed to reduce, and demonstrably reduces or significantly mitigates, specific, identifiable risks of individual or aggregated positions of the banking entity.

In order to engage in permitted trading and fund activities, financial institutions are required to establish a comprehensive compliance program. These compliance requirements vary based on the size of the institution and the amount of activities conducted. This provision is meant to reduce the burden on smaller, less complex entities. Institutions that do not engage in activities covered by the regulations have no compliance program requirements. This is a departure from the original proposed rule, which would have required every financial institution, even those not engaged in any activity covered by the Volcker Rule, to adopt a compliance program.

For additional information or assistance with implementing the regulations, please contact Mark Aldrich, Esq. or Michael Delune, Esq. at (949) 474-1944.