

## **(Not-So-Big) Spoiler Alert: Agencies Want to Take Away a Few More Bank Powers**

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In a post-holiday “back-to-school” development for the banking industry, the Federal Reserve Board (Board), Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) have issued an anticipated and long-overdue report (Report) under Section 620 of the Dodd-Frank Act that recommends that Congress repeal, or the agencies restrict, several types of bank and bank holding company activities that banking organizations have conducted in recent years.

Dodd-Frank Act Section 620 requires the federal banking agencies to study and report to Congress on the activities and investments that banking entities (as the term is defined in the Volcker Rule) may engage in under state and federal law, as well as review (i) the permissible activities and investments of banking entities, (ii) the risks associated with or presented as a result of such activities or investments, and (iii) the risk mitigation activities undertaken by banking entities with regard to such risks. In addition, Section 620 requires the banking agencies to make recommendations on the negative prudential impact of such activities or investments, whether they are appropriate activities for banking entities, and additional restrictions as might be necessary to address relevant banking entity-level or system safety and soundness concerns.

Publication of the Report, and some of the topics that the Report might address, has been broadly discussed in industry and public circles for some time, although the specifics of what the banking agencies would say in the Report were not known. Now they are, and banking organizations that read through the dense and lengthy Report may be interested to read that the Report (which comprises three agency-specific subreports) contains the following:

### **Board recommendations that Congress**

- repeal the authority of financial holding companies to engage in merchant banking activities under section 4(k) of the Bank Holding Company Act (BHCA);
- repeal the exemption that permits corporate owners of industrial loan companies (ILCs) to operate outside the holding company regulatory and supervisory framework that applies to other owners of insured depository institutions; and

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- repeal the exemption for grandfathered unitary savings and loan holding companies (SLHCs) from the activities restrictions applicable to all other SLHCs.

**OCC recommendations** consisting of statements of its intent to

- issue a proposed rule to prohibit federal banking entities from holding asset-backed securities that hold bank-impermissible assets;
- address concentrations of mark-to-model assets and liabilities with a rulemaking or guidance;
- clarify minimum prudential standards for certain national bank swap dealing activities;
- consider providing guidance on clearinghouse memberships;
- clarify regulatory limits on physical hedging;
- address national banks' authority to hold and trade copper; and
- incorporate the Volcker Rule into the OCC's Part 1 investment securities regulations.

Less ambitious **FDIC recommendations** consisting of statements of its intent to

- review its part 362 regulations (activities of insured state banks) governing insured bank investments in other financial institutions and other equity investments in light of more recent developments to determine whether changes to this regulatory framework are needed; and
- determine whether the prudential conditions and standards under which the FDIC will evaluate part 362 filings with respect to mineral rights, commodities, or other nontraditional activities need to be clarified and, if so, consider issuing an appropriate statement of policy.

## Takeaways

Many of these recommendations should come as little surprise to banking industry participants. For example, the Board hinted almost three years ago that it was uncomfortable with the BHCA merchant banking authority, and its and the FDIC's longstanding antipathy to commercial ownership of ILCs is a matter of common knowledge. Further, the banking agencies' collective intent to restrict commodities trading activities has been actively under discussion for some time. By the same token, grandfathered unitary SLHCs undoubtedly will be dismayed by the Board's desire to end their broader range of grandfathered nonbanking activities, as will participants in securitizations by the OCC's intention to limit the types of asset-backed securities that banks may hold.

On balance, however, the impact of these recommendations (putting aside that the legislative recommendations depend on Congress taking these matters up—not likely to happen before 2017) would be limited primarily to larger banks and would occur around the edges of banking, rather than at its center.

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