

From: Kymes, Stacy
Sent: Friday, January 13, 2012 10:45 AM
To: Fajfar, Mark
Cc: Walton, Steve
Subject: Derivatives Pushout Rulemaking

Mark –

We have corresponded in the past through an introduction from Ryan McKee regarding the swap dealer definitions. I wanted to pass along some thoughts that were generated from your recently proposed rules regarding the Volcker Rule.

The CFTC version of the Volcker Rule implementation regulations has the riskless principal transaction exception from the prohibition of banking entities engaging in proprietary trading. We wanted to make the following points:

- The point of the Volcker Rule prohibition on proprietary trading is to prevent a banking entity trading in a way that puts that entity at financial risk. The pushout rule has the same purpose. Indeed, the Volcker Rule amplifies that concern, as it applies not just to national banks but to bank holding companies and holding company subsidiaries.
- The SEC, Federal Reserve, OCC and FDIC in their proposed regulations to implement the Volcker Rule all exempted riskless principal trading from the Volcker Rule prohibition on proprietary trading. The only reason these agencies would exempt riskless principal trading is if they had concluded that such transactions do not put the entity at financial risk.
- This week your agency issued its version of the Volcker Rule implementing regulations and also exempted riskless principal trading.
- If riskless principal trading by banking entities is sufficiently safe that it need not be restricted under the Volcker Rule, then, for the same reason, banks need not be characterized as swap dealers, and subjected to the pushout rule, for engaging in riskless principal trading.
- In short, the CFTC's own decision to exempt riskless principal trading from the Volcker Rule justifies our request for a similar exemption for riskless principal trading from swap dealer characterization.

We had previously given the CFTC language creating this exemption. That language can be modified now to tie specifically to the proposed regulations implementing the Volcker Rule. The modified language is attached. I understand you may be nearer to issuing the swap dealer definitions and did not want to miss an opportunity the congruence of the CFTC's Volcker Rules and our previous comments on the swap dealer definitions.

Please don't hesitate to let me know if you have any further questions or comments. We appreciate your consideration.

Stacy Kymes
Executive Vice President
BOKF, N.A.
PO Box 2300
Tulsa, OK 74192

Riskless Principal Derivatives Trading Swaps Dealer Exception

[Proposed In BOK Financial Corporation Letter dated January 31, 2011 to CFTC and SEC dated, revised to Reflect CFTC Proposal Including a Riskless Principal Trading Exception from the Volcker Rule Restriction on Proprietary Trading]

Rule 1.3(ppp), *Definitions—Swap Dealer*

...

(2) Exceptions. The term “swap dealer” does not include a person that--

- (a) enters into swaps for such person’s own account, either individually or in a fiduciary capacity, but not as part of regular business; *or*
- (b) *is an insured depository institution that enters into swaps pursuant to Section ____6(b)(2)(ii) of [The CFTC Regulations implementing the Volcker Rule].*