
Oleh Zadoretzky

Navitech LLC

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Board of Governors of the United States Federal Reserve System

20th Street and Constitution Avenue N.W.,
Washington, DC 20551

Dear Sirs,

I appreciate the opportunity generously extended to me by the Board of Governors of the United States Federal Reserve System, along with the OCC, FDIC, SEC, and CFTC (hereinafter ‘the Agencies’) to express my views on the pending Volcker Rule (hereinafter ‘the Rule’) implementation amendments. Having thoroughly familiarized myself with the proposal, I would like to express the following reservations and concerns of mine.

Under the 2013 rule § __.10(c)(1) and 79 FR 5678, a foreign public fund is generally defined under the implementing regulations as any issuer that is organized or established outside of the United States and the ownership interests of which are (1) authorized to be offered and sold to retail investors in the issuer’s home jurisdiction and (2) sold predominantly through one or more public offerings outside of the United States.

While the ownership interests in a foreign public fund might be authorized to be both offered and sold to retail investors in the issuer’s home jurisdiction as well as sold predominantly through one or more public offerings outside of the United States, the said authorization is often non-exclusive and does not necessarily preclude sales of the ownership interests in question to non-domestic and non-retail investors. A better language for this requirement would therefore be “*sold to and owned by bona fide retail investors in the issuer’s home jurisdiction*” instead of “*authorized to be offered and sold to retail investors in the issuer’s home jurisdiction*”.

To satisfy the Agencies’ requirement of a foreign public fund having been sold predominantly outside of the United States under 79 FR 5678, the Agencies generally expect that a foreign public fund would satisfy this additional condition if 85 percent or more of the fund’s interests are sold to persons other than the sponsoring U.S. banking entity and the specified persons connected to that banking entity.

It is worth noting that a considerable portion of the said 85 percent can be purchased by US-affiliated entities other than the sponsoring U.S. banking entity and the specified persons connected to that banking entity as long as a foreign public fund’s ownership interests only need to be authorized to be offered and sold to retail investors in the issuer’s home jurisdiction as

opposed to being actually sold and owned in the prescribed manner, thus potentially amounting to the non-sponsoring US-affiliated entities' stake ownership up to a point of a joint controlling US ownership interest in the fund which the Rule intended to preclude. It would therefore be better to require that 85 percent or more of the fund's interests are sold to *bona fide non-US persons* rather than merely persons other than the sponsoring U.S. banking entity and the specified persons connected to that banking entity.

The concepts of "*bona fide non-US persons*" and "*ownership interests*" must be defined and expanded within the scope of the Rule implementation. "*Bona fide non-US persons*" must cover any and all non-US individuals and entities that are neither directly nor indirectly (via a declaration of trust, nominee directorship and/or shareholding, bearer shares, unlimited power of attorney, or in any other manner) controlled by US individuals or entities. Similarly, the *ownership interests* requirement must cover provision of proof, such as a sworn affidavit under a penalty of perjury, that no US persons with controlling powers of any sort are among the ultimate beneficial owners (UBOs) of a foreign public fund. Jointly and severally, these definitions and requirements must be made part of the substantive disclosure condition added to the "*public offering*" definition.

Very truly yours,

Oleh Zadoretzky