

VOLCKER RULE REGULATORY HARMONIZATION ACT

APRIL 5, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4790]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4790) to amend the Volcker rule to give the Board of Governors of the Federal Reserve System sole rulemaking authority, to exclude community banks from the requirements of the Volcker rule, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Volcker Rule Regulatory Harmonization Act”.

**SEC. 2. RULEMAKING AUTHORITY UNDER THE VOLCKER RULE.**

(a) **IN GENERAL.**—Paragraph (2) of section 13(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(b)(2)) is amended to read as follows:

“(2) **RULEMAKING.**—

“(A) **IN GENERAL.**—The Board may, as appropriate, consult with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission to adopt rules or guidance to carry out this section, as provided in subparagraph (B).

“(B) **RULEMAKING REQUIREMENTS.**—In adopting a rule or guidance under subparagraph (A), the Board—

“(i) shall consider the findings of the report required in paragraph (1) and, as appropriate, subsequent reports;

“(ii) shall assure, to the extent possible, that such rule or guidance provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board; and

“(iii) shall include requirements to ensure compliance with this section, such as requirements regarding internal controls and record-keeping.

“(C) AUTHORITY.—The Board shall have sole authority to issue and amend rules under this section after the date of the enactment of this paragraph.

“(D) CONFORMING AUTHORITY.—

“(i) CONTINUITY OF REGULATIONS.—Any rules or guidance issued under this section prior to the date of enactment of this paragraph shall continue in effect until the Board issues a successor rule or guidance, or amends such rule or guidance, pursuant to subparagraph (C).

“(ii) APPLICABLE GUIDANCE.—In performing examinations or other supervisory duties, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, as appropriate, shall update any applicable policies and procedures to ensure that such policies and procedures are consistent (to the extent practicable) with any rules or guidance issued pursuant to subparagraph (C).”.

(b) CONFORMING AMENDMENTS.—Section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851) is amended—

(1) by striking “the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission,” each place it appears and inserting “the Board”;

(2) by striking “appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission” each place it appears and inserting “Board”;

(3) in subsection (c)(5), by striking “Notwithstanding paragraph (2)” and all that follows through “provided in subsection (b)(2),” and inserting “The Board shall have the authority”; and

(4) in subsection (d)(1)—

(A) in subparagraph (F)(ii)—

(i) by striking “the appropriate Federal banking agencies” and inserting “the Board”; and

(ii) by striking “have not jointly” and inserting “has not”; and

(B) in subparagraph (G)(viii), by striking “appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission,” and inserting “Board.”.

### SEC. 3. ENFORCEMENT; ANTI-EVASION.

(a) IN GENERAL.—Subsection (e) of section 13 of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(e)) is amended to read as follows:

“(e) ENFORCEMENT; ANTI-EVASION.—

“(1) APPROPRIATE FEDERAL BANKING AGENCY.—Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the appropriate Federal banking agency has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity), such appropriate Federal banking agency shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment.

“(2) SECURITIES AND EXCHANGE COMMISSION AND COMMODITY FUTURES TRADING COMMISSION.—

“(A) IN GENERAL.—Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a covered nonbank financial company for which the respective agency is the primary Federal regulator has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through

an abuse of any permitted activity), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the covered nonbank financial company to terminate the activity and, as relevant, dispose of the investment.

“(B) COVERED NONBANK FINANCIAL COMPANY DEFINED.—In this paragraph, the term ‘covered nonbank financial company’ means a nonbank financial company (as defined in section 102 of the Financial Stability Act of 2010) supervised by the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate.”

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to abrogate, reduce, or eliminate the backup authority of the Federal Deposit Insurance Corporation authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.), the Federal Deposit Insurance Act (12 U.S.C. 1811), or Federal Deposit Insurance Corporation Improvement Act of 1991.

#### SEC. 4. EXCLUSION OF COMMUNITY BANKS FROM VOLCKER RULE.

Section 13(h)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(1)) is amended—

(1) in subparagraph (D), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and adjusting the margins accordingly;

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively, and adjusting the margins accordingly;

(3) in the matter preceding clause (i), as so redesignated, in the second sentence, by striking “institution that functions solely in a trust or fiduciary capacity, if—” and inserting the following: “institution—

“(A) that functions solely in a trust or fiduciary capacity, if—”;

(4) in clause (iv)(II), as so redesignated, by striking the period at the end and inserting “; or”; and

(5) by adding at the end the following:

“(B) that does not have and is not controlled by a company that has—

“(i) more than \$10,000,000,000 in total consolidated assets; and

“(ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.”.

#### PURPOSE AND SUMMARY

On January 12, 2018, Representative French Hill introduced H.R. 4790, the “Volcker Rule Regulatory Harmonization Act,” to streamline the regulatory authority established by Section 619 of the Dodd-Frank Act, also known as the Volcker Rule, and provide community banks under \$10 billion with an exclusion related to the Volcker Rule compliance obligations.

More specifically, H.R. 4790, as modified by an amendment in the nature of a substitute offered by Representative Bill Foster and accepted by Representative Hill, achieves these objectives by amending Section 619 of the Dodd-Frank Act such that the Board of Governors of the Federal Reserve (Federal Reserve) has exclusive rulemaking authority and the primary Federal regulator for each entity required to comply with the rule has sole examination and enforcement authority over that entity. The legislation also excludes community banks from Volcker Rule compliance if they do not have and are not controlled by an entity with \$10 billion or more in total consolidated assets and total trading assets and trading liabilities that are more than five percent of total consolidated assets.

#### BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 4790 is to enhance regulatory clarity and certainty as well as reduce burdensome and duplicative compliance costs associated with Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203)—popu-

larly known as the “Volcker Rule” after its chief proponent, former Federal Reserve Board Chairman Paul Volcker.

The Volcker Rule generally prohibits U.S. bank holding companies and their affiliates from engaging in “proprietary trading” and from sponsoring hedge funds and private equity funds. In its design and implementation, however, the Volcker Rule far overshot the mark and has created an extraordinarily complex and burdensome compliance regime due to several factors, including: the scope of firms subject to the rule’s prohibitions, the number of regulators charged with enforcement, ambiguous rules and definitions, and the extensive compliance programs that the rule requires firms to adopt. The result has chilled market-making functions necessary to ensure a healthy level of market liquidity and hedging activity to mitigate risk.

Banks play an extremely important role in U.S. financial markets by buying and selling securities on behalf of their customers, also known as “market making.” Market making is crucial to the modern financial system, in which companies raise funds by selling equity, bonds, notes, and commercial paper. By acting as intermediaries between buyers and sellers, banks hold prices down, maintain tight trading spreads and facilitate continuous markets. Without market makers, buyers and sellers would have to find each other, making transactions both more costly and less frequent. Corporations that issue debt to pay for capital investments, invest in research and development, meet payroll, or hire new workers depend on market makers to hold down the cost of credit.

Market makers also hold down the cost of credit for consumers: credit card debt and mortgages are often financed by being bundled into securities, which are then bought and sold in the capital markets. By acting as a market maker for these kinds of securities, banks make it cheaper and easier for consumers to use their credit cards or obtain mortgages. Savers—through large pension funds, mutual funds, and insurance companies—also depend on the willingness of market makers to buy and sell securities. These institutional investors cannot “save” their cash at banks as small depositors do, and they must be able to quickly meet calls for cash from their investors. The market-making activities of banks permit these firms to “save” cash by purchasing financial assets and “withdraw” cash by selling those assets. This ability to “save” and “withdraw” in turn benefits the small investors that are the clients of these financial firms.

The drafters of the Volcker Rule acknowledged the key role that market-making plays in ensuring deep, liquid capital markets, and as a result attempted to exempt market-making activities from prohibition on proprietary trading. But the final rules implementing the Volcker Rule make it difficult for banks to buy or sell securities for their own inventory in anticipation of client demand because managing inventory can look like “proprietary trading”—potentially subjecting the firm to regulatory sanctions and monetary penalties. The inevitable result of this uncertainty is a reduction of liquidity in crucial market sectors—including the corporate debt market—which has the perverse effect of making the financial system less resilient and more vulnerable to destabilizing events like the one that the Dodd-Frank was supposed to prevent.

The economic consequences of a sharp reduction in market liquidity—where market participants lose the ability to buy or sell securities quickly at a given price—cannot be overstated. In addition to higher costs for corporations and consumers, the value of assets held by large pension funds, mutual funds, and insurance companies—assets which represent the savings of millions of small investors—will decline as those assets become harder to trade, making those investors worse off. The lack of liquidity also means that financial markets have less capacity to deal with shocks and will be more likely to seize up in a panic, just as they did in the 2008 financial crisis. Reduced liquidity in the bond markets amplifies volatility when prices begin to decline. Rather than making markets more stable, then, the new regulations have made them more brittle.

H.R. 4790 represents an important first step to address the unintended and negative consequences of the Volcker Rule by streamlining the rulemaking authority with the Federal Reserve, consolidating examination and enforcement authority into a single, primary regulator, and excluding from the rule community banks under \$10 billion in consolidated assets and with trading assets and liability less than five percent. Outside of full repeal of the Volcker Rule, these measures are important and sensible changes to ensure much needed regulatory clarity and to reduce burdensome compliance costs.

A central problem with the Volcker Rule was its design and implementation. The Dodd-Frank Act unartfully conferred responsibility for both implementing and enforcing the Volcker Rule on five different federal financial regulators: the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). Not surprisingly, given their disparate statutory mandates and regulatory missions, these agencies struggled to achieve consensus on a regulation to implement the Volcker Rule's vague legislative language. On December 10, 2013, the agencies voted to approve a final regulation implementing the Volcker Rule. The final rule totals 932 pages and 297,000 words.

The same five agencies that drafted the Volcker Rule are also responsible now for its enforcement. Most bank holding companies will likely be overseen by at least two of those regulators, and some may be overseen by as many as four. Bank holding companies that have a broker-dealer or a futures commission merchant will also be subject to examinations by self-regulatory organizations for compliance with the SEC's and CFTC's rules.

These five regulators have disparate mandates and regulatory philosophies. Bank regulators have traditionally focused on the safety and soundness of the institutions they supervise, whereas market regulators like the SEC and CFTC have emphasized disclosure, conduct, investor protection and market functionality and operations. These divergent approaches mean that regulated institutions may well face conflicting guidance and mandates from the regulators charged with implementing the Volcker Rule. As a result of these divergent mandates among the regulators, financial institutions may be asked to comply with conflicting interpretations about whether a given trade or activity violates the rule. Con-

flicting interpretations and regulatory divergence are even more likely to happen because the final rule contains no provisions requiring the regulators to coordinate oversight and enforcement, or to harmonize the different approaches that bank regulators and market regulators take towards compliance.

In response to congressional concerns about the lack of a harmonized enforcement approach, the five agencies tasked with implementing the Volcker Rule announced in February 2014 that they had formed an interagency working group that will meet regularly to discuss implementation of the final Volcker Rule. Some four years later, the working group has not yet created a dedicated and public website at which institutions affected by the Volcker Rule can review regulatory guidance, examination protocols, or interpretations.

Regardless, the current regulatory framework results in fragmentation and confusion for institutions subject to the rule. The CFTC has jurisdiction of futures commission merchants and swap dealers; the SEC over brokers, dealers, investment companies and advisers, and security-based swap dealers; the OCC over national banks; the FDIC over insured nonmember state banks; and the Federal Reserve over bank holding companies and their subsidiaries not otherwise regulated by other regulators, state member banks, and foreign banking organizations. As indicated, in some cases multiple agencies have responsibility for a single banking entity—i.e., a national bank that is a swap dealer, where a single trade and related hedge could be booked at two different entities, each of which is regulated by a different agency. This fragmentation of responsibility to determine how to apply the Volcker rule to a particular banking entity or trading desk is inefficient for both the banks and the regulators.

The regulators' existing approach to coordination has not worked and, as a result, banks have had difficulty obtaining clear, consistent guidance. Even former Federal Reserve Governor Daniel Tarullo noted in his farewell remarks, "Efforts to achieve consistency in treatment across agencies have been both time-consuming and, at times, unsuccessful." The Committee has learned that at least one regulated entity who attempted to schedule a meeting with all five regulators in the same room to describe the entity's compliance program and solicit feedback from the regulators; but the regulators advised the entity that if a joint meeting were to happen, some of the agencies would be unable to provide feedback since the regulators do not have an inter-agency information-sharing agreement which would eliminate protections that otherwise exist for bank-to-examiner conversations. The Committee also is aware of instances in which the prudential regulators (jointly) and the SEC (separately) have undertaken duplicative, simultaneous examinations of the same trading desks. Further, at least one regulated firm has received conflicting instructions regarding trading desk size from multiple examining agencies.

H.R. 4790 addresses the Volcker Rule's fragmented regulatory structure by concentrating rulemaking authority in a single agency—the Federal Reserve—and giving an entity's primary federal regulator sole enforcement and examination authority as it relates to the Volcker Rule. During their respective testimonies before the Financial Services Committee in 2018, both Treasury Secretary

Steven Mnuchin and Federal Reserve Chairman Jay Powell stated that they would support amending the Volcker Rule in a manner that consolidates rulemaking authority with the Federal Reserve.

In performing its rulemaking responsibilities, H.R. 4790 envisions a revised regulatory structure whereby the Federal Reserve may consult with the OCC, FDIC, SEC, and CFTC. The Committee also expects that the other four agencies will consistently apply and implement the Federal Reserve's rules or guidance during examinations and enforcement actions. Consistent with these requirements, the Federal Reserve may want to consider a method and develop a process to ensure that if any agency involved with enforcing the Volcker Rule becomes aware of an issue that may best be addressed by an amendment to an existing rule or promulgation of a new rule that issue can be reported to and, as appropriate, considered by the Federal Reserve.

Consistent with recommendations from the Department of the Treasury, in addition to streamlining the regulatory implementation of the Volcker Rule, H.R. 4790 also exempts banking organizations that do not have and are not controlled by an entity with \$10 billion or more in total consolidated assets and total trading assets and trading liability that are more than 5 percent of total consolidated assets. S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act, includes a similar provision to exempt banks with under \$10 billion in assets. The Senate passed S. 2155 by a roll-call vote of 67-to-31 on March 14, 2018.

In light of the disproportionate compliance costs community banks face as a result of the Volcker Rule, a bright-line exemption like this makes sense because most small banks do not even engage in proprietary trading or invest in or sponsor private equity or hedge funds. While the Volcker Rule regulations purportedly have provided banking entities with under \$10 billion in assets with relief from the rule's compliance program requirements, these banks still must expend considerable resources to ensure that their activities do not constitute prohibited proprietary trading. Because of the Volcker Rule's complexity as implemented, even those community banks that do not conduct any proprietary trading have nonetheless had to incur large costs simply proving what the regulators already know—that they are not engaged in activities covered by the rule. For instance, community banks must review their investment portfolios to determine whether they are purchasing or selling any securities for a “trading account”—a term that can be defined by the Volcker Rule under any one of three different tests, one of which requires the bank to divine the intent underlying each transaction. Community banks also must perform due diligence to determine whether each security in their portfolios qualifies for an exemption from the rule. Thus, the community bank exemption here will remove one more unnecessary regulatory burden inflicted on community financial institutions by the Dodd-Frank Act.

#### HEARINGS

The subcommittee on Capital Markets, Securities, and Investment held hearings examining matters relating to H.R. 4790 on March 29, 2017, April 26, 2017, and April 28, 2017.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 21, 2018 and ordered H.R. 4790 to be reported favorably to the House, as amended by a recorded vote of 50 yeas to 10 nays (recorded vote no. FC-171), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Foster by voice vote.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 50 yeas to 10 nays (Record vote no. FC-171), a quorum being present.



## Record vote no. FC-171

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....	X			Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....	X			Ms. Velázquez .....		X	
Mr. Royce (CA) .....	X			Mr. Sherman .....	X		
Mr. Lucas .....	X			Mr. Meeks .....	X		
Mr. Pearce .....	X			Mr. Capuano .....		X	
Mr. Posey .....	X			Mr. Clay .....	X		
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....	X			Mr. Cleaver .....	X		
Mr. Hultgren .....	X			Ms. Moore .....	X		
Mr. Ross .....	X			Mr. Ellison .....		X	
Mr. Pittenger .....	X			Mr. Perlmutter .....	X		
Mrs. Wagner .....	X			Mr. Himes .....	X		
Mr. Barr .....	X			Mr. Foster .....	X		
Mr. Rothfus .....	X			Mr. Kildee .....		X	
Mr. Messer .....	X			Mr. Delaney .....	X		
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....	X		
Mr. Poliquin .....	X			Mr. Heck .....	X		
Mrs. Love .....	X			Mr. Vargas .....	X		
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....	X		
Mr. Zeldin .....	X			Mr. Crist .....		X	
Mr. Trott .....	X			Mr. Kihuen .....		X	
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	X						

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4790, as amended, will provide regulatory clarity and efficiencies and eliminate burdensome costs to community banks by amending the Volcker Rule to grant the Federal Reserve the sole rulemaking authority, provide an entity's primary Federal regulator with sole examination and enforcement authority, and exempt community banks if they do not have and are not controlled by an entity with \$10 billion or more in total consolidated assets and total trading assets and trading liabilities that are more than 5 percent of total consolidated assets.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 4, 2018.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4790, the Volcker Rule Regulatory Harmonization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nathaniel Frentz.

Sincerely,

MARK P. HADLEY  
(For Keith Hall, *Director*).

Enclosure.

*H.R. 4790—The Volcker Rule Regulatory Harmonization Act*

The Volcker Rule restricts financial institutions insured by the Federal Deposit Insurance Corporation from engaging in certain proprietary trading of securities, derivatives, commodity futures, and options on those instruments. With some exceptions, the rule also prohibits those institutions from owning, sponsoring, or having certain relationships with hedge funds and private equity funds. Rulemaking responsibilities under the Volcker Rule are shared among a group of financial regulatory institutions, including the Board of Governors of the Federal Reserve System.

H.R. 4790 would amend current law to grant the Federal Reserve's Board of Governors sole authority for that rulemaking. The bill also would exclude community banks those with less than \$10 billion in assets and that meet certain other criteria from the Volcker Rule's requirements.

CBO estimates that the change would not significantly affect the budgets of any of the federal regulators because final rules implementing the Volcker Rule have already been adopted. Using information from affected agencies, CBO estimates that any future costs to amend rules would be insignificant. CBO also estimates that the exemption of community banks would not significantly affect the workload or other administrative costs of the relevant regulators.

Although CBO estimates that there is some probability of civil penalties' being collected over the 2018–2027 period for violations of the Volcker Rule, the bill's exemption for community banks is unlikely to significantly affect the amount of such penalties. CBO estimates that those penalties would be small if they are assessed at all for such banks.

Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that any net changes in direct spending or revenues would not be significant.

CBO estimates that enacting H.R. 4790 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4790 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Nathaniel Frenzt. The estimate was approved by John McClelland, Assistant Director for Tax Analysis, and Theresa Gullo, Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 4790, as “The Volcker Rule Regulatory Harmonization Act”.

##### *Section 2. Rulemaking authority under the Volcker Rule*

This section amends Section 13(b) of the Bank Holding Company Act of 1956, to give sole rulemaking authority to the Federal Reserve. In doing so, it provides that the Board may, as appropriate, consult with the OCC, FDIC, SEC, and CFTC to adopt rules or guidance and provides certain rulemaking requirements that the Federal Reserve shall perform as part of its rulemaking function. Additionally, this section clarifies that any rules or guidance that were issued prior to enactment of this Act shall remain in effect until the Federal Reserve issues a successor rule or guidance or amends such rule or guidance. The section further makes clear that the Federal Reserve, OCC, FDIC, SEC, and CFTC shall update any applicable policies and procedures to ensure that such are consistent with any rules or guidance issued by the Federal Reserve. Finally, this section provides for a series of conforming amend-

ments consistent with providing the Federal Reserve sole rule-making authority.

*Section 3. Enforcement; anti-evasion*

This section amends Subsection (e) of section 13 of the Bank Holding Company Act of 1956, to give the appropriate Federal banking agency the sole examination and enforcement authority over the respective banking entity under its supervision or nonbank financial company under supervision by the Federal Reserve. Similarly, this section also provides the sole examination and enforcement authority to the SEC and CFTC over a covered nonbank financial company for which the respective agency is the primary Federal regulator.

*Section 4. Exclusion of community banks from Volcker Rule*

This section amends Section 13(h)(1) of the Bank Holding Company Act of 1956, to exclude community banks that do not have and are not controlled by a company that has total consolidated assets of \$10,000,000,000 and total trading assets and trading liabilities that are more than 5 percent of total consolidated assets.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**BANK HOLDING COMPANY ACT OF 1956**

\* \* \* \* \*

**SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

(a) IN GENERAL.—

(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

(A) engage in proprietary trading; or

(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as

provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) STUDY AND RULEMAKING.—

(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

(A) promote and enhance the safety and soundness of banking entities;

(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

[(2) RULEMAKING.—

[(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

[(B) COORDINATED RULEMAKING.—

[(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

[(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

[(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by

the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

[(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

[(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

[(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.]

(2) RULEMAKING.—

(A) *IN GENERAL.*—*The Board may, as appropriate, consult with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission to adopt rules or guidance to carry out this section, as provided in subparagraph (B).*

(B) *RULEMAKING REQUIREMENTS.*—*In adopting a rule or guidance under subparagraph (A), the Board—*

*(i) shall consider the findings of the report required in paragraph (1) and, as appropriate, subsequent reports;*

*(ii) shall assure, to the extent possible, that such rule or guidance provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board; and*

(iii) shall include requirements to ensure compliance with this section, such as requirements regarding internal controls and recordkeeping.

(C) *AUTHORITY.*—The Board shall have sole authority to issue and amend rules under this section after the date of the enactment of this paragraph.

(D) *CONFORMING AUTHORITY.*—

(i) *CONTINUITY OF REGULATIONS.*—Any rules or guidance issued under this section prior to the date of enactment of this paragraph shall continue in effect until the Board issues a successor rule or guidance, or amends such rule or guidance, pursuant to subparagraph (C).

(ii) *APPLICABLE GUIDANCE.*—In performing examinations or other supervisory duties, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, as appropriate, shall update any applicable policies and procedures to ensure that such policies and procedures are consistent (to the extent practicable) with any rules or guidance issued pursuant to subparagraph (C).

(c) *EFFECTIVE DATE.*—

(1) *IN GENERAL.*—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

(A) 12 months after the date of the issuance of final rules under subsection (b); or

(B) 2 years after the date of enactment of this section.

(2) *CONFORMANCE PERIOD FOR DIVESTITURE.*—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

(3) *EXTENDED TRANSITION FOR ILLIQUID FUNDS.*—

(A) *APPLICATION.*—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

(B) *TIME LIMIT ON APPROVAL.*—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

(4) *DIVESTITURE REQUIRED.*—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any



activity prohibited under subsection (a)(1)(B) after the earlier of—

(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

(B) the date on which any extensions granted by the Board under paragraph (3) expire.

(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—[Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2),] *The Board shall have the authority* to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issue rules to implement paragraphs (2) and (3).

(d) PERMITTED ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that [the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission,] *the Board* may determine, the following activities (in this section referred to as “permitted activities”) are permitted:

(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) [the appropriate Federal banking agencies] *the Board*, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, [have not jointly] *has not* determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the [appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission,] *Board*, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(J) Such other activity as the [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

(2) LIMITATION ON PERMITTED ACTIVITIES.—

(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

(iii) would pose a threat to the safety and soundness of such banking entity; or

(iv) would pose a threat to the financial stability of the United States.

(B) RULEMAKING.—The [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

(4) DE MINIMIS INVESTMENT.—

(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

(ii) making a de minimis investment.

(B) LIMITATIONS AND RESTRICTIONS ON INVESTMENTS.—

(i) REQUIREMENT TO SEEK OTHER INVESTORS.—A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

(ii) LIMITATIONS ON SIZE OF INVESTMENTS.—Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not

more than 3 percent of the total ownership interests of the fund;

(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

(iii) CAPITAL.—For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

(C) EXTENSION.—Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

**[(e) ANTI-EVASION.—**

**[(1) RULEMAKING.—**The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

**[(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—**Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.]

**(e) ENFORCEMENT; ANTI-EVASION.—**

**(1) APPROPRIATE FEDERAL BANKING AGENCY.—***Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the appropriate Federal banking agency has reasonable cause to believe*

*that a banking entity or nonbank financial company supervised by the Board has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity), such appropriate Federal banking agency shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment.*

**(2) SECURITIES AND EXCHANGE COMMISSION AND COMMODITY FUTURES TRADING COMMISSION.—**

**(A) IN GENERAL.—***Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a covered nonbank financial company for which the respective agency is the primary Federal regulator has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the covered nonbank financial company to terminate the activity and, as relevant, dispose of the investment.*

**(B) COVERED NONBANK FINANCIAL COMPANY DEFINED.—***In this paragraph, the term “covered nonbank financial company” means a nonbank financial company (as defined in section 102 of the Financial Stability Act of 2010) supervised by the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate.*

**(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—**

**(1) IN GENERAL.—**No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

**(2) TREATMENT AS MEMBER BANK.—**A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c 1), as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

## (3) PERMITTED SERVICES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

## (B) TREATMENT OF PRIME BROKERAGE TRANSACTIONS.—

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if the counterparty were an affiliate of the banking entity.

(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

## (g) RULES OF CONSTRUCTION.—

(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

(h) DEFINITIONS.—In this section, the following definitions shall apply:

(1) BANKING ENTITY.—The term “banking entity” means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term “insured depository institution” does not include an [institution that functions solely in a trust or fiduciary capacity, if—] *institution—*

(A) *that functions solely in a trust or fiduciary capacity, if—*

[(A)] (i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

[(B)] (ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

[(C)] (iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

[(D)] (iv) such institution does not—

[(i)] (I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

[(ii)] (II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7))**[.]**; or

(B) *that does not have and is not controlled by a company that has—*

(i) *more than \$10,000,000,000 in total consolidated assets; and*

(ii) *total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.*

(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms “hedge fund” and “private equity fund” mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* may, by rule, as provided in subsection (b)(2), determine.

(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term “nonbank financial company supervised by the Board” means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.



(4) PROPRIETARY TRADING.—The term “proprietary trading”, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* may, by rule as provided in subsection (b)(2), determine.

(5) SPONSOR.—The term to “sponsor” a fund means—

(A) to serve as a general partner, managing member, or trustee of a fund;

(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(6) TRADING ACCOUNT.—The term “trading account” means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the [appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission] *Board* may, by rule as provided in subsection (b)(2), determine.

(7) ILLIQUID FUND.—

(A) IN GENERAL.—The term “illiquid fund” means a hedge fund or private equity fund that—

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) HEDGE FUND.—For the purposes of this paragraph, the term “hedge fund” means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(m)).

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## MINORITY VIEWS

H.R. 4790 is the latest attempt to weaken the Volcker Rule, a cornerstone of Wall Street reform enacted in the wake of the financial crisis that prohibits taxpayer-backed banks from risky proprietary trading and from owning hedge and private equity funds. The bill would create a dangerous loophole by providing a blanket exemption from the Volcker Rule for banks with consolidated assets of \$10 billion or less and with less than 5% of those assets in trading assets. The bill would also delegate sole rulemaking authority on the Volcker Rule to the Federal Reserve, inappropriately and unnecessarily taking away the jurisdiction of the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of Currency (OCC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC) and making it easier for the Trump Administration to weaken or repeal the rule.

Leading up to the financial crisis, Wall Street megabanks engaged in “proprietary trading,” which is essentially speculative, highly-leveraged bets that benefit their bottom line, but use federally-insured loans backed by the U.S. taxpayer. When the housing bubble finally burst, these bets in risky credit-default swaps and subprime mortgage-backed securities led to massive losses and a federal bailout. To protect the American taxpayer and the economy from this sort of risky trading, Congress included the Volcker Rule as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Seven years later, the Volcker Rule is largely in place. It has resulted in less reckless risk-taking by Wall Street megabanks and a stronger financial system. And, despite dire predictions by opponents, our markets are adapting and thriving. For example, in the bond market, which has long been dominated by bank dealers, we have seen record new bond issuances by companies seeking to raise funds and record trading volumes in those bonds. Most other metrics also show a healthy, liquid corporate bond market.

Nevertheless, H.R. 4790 would provide an exemption from the Volcker Rule’s prohibitions against proprietary trading and owning hedge and private equity funds for entities with consolidated assets of \$10 billion or less and with less than 5% of those assets in trading assets. While most community banks currently do not engage in such risky activities, a blanket exemption sends them the Congressional thumbs-up for them to do so in the future instead of focusing on the traditional business of banking. This blanket exemption is opposed by former Fed Chairman Paul Volcker, FDIC Chairman Martin Gruenberg, FDIC Vice Chairman Thomas Hoenig, and investor advocates. According to Mr. Hoenig, the exemption could “open a loophole that would invite abuse of the safety net in the future.” If we truly want to support our community banks while ensuring that they remain in the traditional business of banking, we

should be looking at other ways to reduce their compliance burden, such as by creating a presumption of compliance with the Volcker Rule.

H.R. 4790 would also repeal the requirement that the Federal Reserve, OCC, FDIC, CFTC, and SEC jointly implement the rule. Instead, the bill would delegate sole rulemaking authority to the Federal Reserve, which could choose to consult with the other banking regulators, the SEC or the CFTC. This would unreasonably cut the FDIC out of any future rule changes, even though it is the regulator charged with protecting deposit insurance against the very risky, speculative activities the Volcker Rule was designed to prevent. It also cuts the SEC and CFTC out from the rule-making process, even though those agencies have the expertise and jurisdiction over broker-dealers and futures traders and their market making activities. Worse, this change would make it easier for the Trump administration to weaken and repeal the rule even though it was efficiently promulgated in 2 years and the regulators are now working together to make appropriate changes. While the bill would at least allow the appropriate banking regulators, SEC, and CFTC to enforce the rule, such enforcement authority is meaningless if the Volcker rule is effectively gutted by the Trump Administration.

For these reasons, we oppose H.R. 4790.

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MICHAEL E. CAPUANO.  
AL GREEN.  
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