



Commodity Futures Trading Commission

Office of Public Affairs

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CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Question Regarding Certain Requirements under Section 13 of the Bank Holding Company Act of 1956 and Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added a new section 13 to the Bank Holding Company Act of 1956 ("BHC Act"), commonly referred to as the Volcker rule, that generally prohibits insured depository institutions and any company affiliated with an insured depository institution from engaging in proprietary trading and from acquiring or retaining ownership interests in, sponsoring, or having certain relationships with a hedge fund or private equity fund. These prohibitions are subject to a number of statutory exemptions, restrictions, and definitions.

The Commodity Futures Trading Commission ("CFTC") is working closely with the other agencies charged with implementing the requirements of section 13, including the Federal Reserve Board, Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission (each an "Agency" and collectively with the CFTC "the Agencies"). While this frequently asked question ("FAQ") applies to banking entities for which the CFTC has jurisdiction under section 13 of the BHC Act, it has been developed by staffs of the Agencies and substantively identical versions will appear on the public websites of each Agency.

Metrics Reporting and Confidentiality

1. Are the quantitative measurements that a banking entity reports under Appendix A of the final rule protected by the Freedom of Information Act ("FOIA")?

The staffs of the Agencies encourage banking entities subject to Appendix A to evaluate exemptions available under the FOIA for their reported metrics information and to request confidential treatment as appropriate. Some firms have stated that metrics data reported to the Agencies represent confidential proprietary information of the banking entity. Exemption 4 of the FOIA protects matters that are trade secrets and commercial or financial information obtained from a person that is privileged or confidential.¹ Other exemptions may also apply. We expect to maintain the confidentiality of the reported metrics information to the extent permitted by law.

¹ 5 U.S.C. § 552(b)(4). Entities may request confidential treatment by the CFTC pursuant to CFTC Rule 145.9. 17 C.F.R. § 145.9. *See also* http://www.cftc.gov/FOI/foia_confidential_treatment.