

# UPDATE

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## News of Developments in the Financial Sector and Related Areas

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#### *Volcker Rule Trust Preferred Securities*

In response to bankers concerns requiring banks to permanently write down their holdings in collateralized debt obligations backed by trust preferred securities ("TruPS CDOs") under the investment prohibitions of section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the Volcker Rule, the federal banking regulatory agencies approved an interim final rule on January 14, 2014, providing for an exemption for all institutions holding TruPS CDOs under conditions as follows: (i) the TruPS CDOs were established and the interest was issued before May 19, 2010, (ii) the banking entity reasonably believes that the offering proceeds received by the TruPS CDOs were invested primarily in Qualifying TruPS Collateral and (iii) the banking entity's interest in the TruPS CDOs was acquired on or before December 10, 2013, the date the agencies issued final rules implementing section 619 of the Dodd-Frank Act.

The interim final rule defines Qualifying TruPS Collateral as any trust preferred security or subordinated debt instrument that was: (i) issued prior to May 19, 2010, by a depository institution holding company that as of the end of any reporting period

within 12 months immediately preceding the issuance of such trust preferred security or subordinated debt instrument had total consolidated assets of less than \$15 billion or (ii) issued prior to May 19, 2010, by a mutual holding company.

The federal banking agencies also released a non-exclusive list of TruPS CDOs that meet the requirements of the interim final rule.

#### *Statement on Diversity Policies*

On October 25, 2013, the Federal Banking Regulatory Agencies ("Agencies") issued a *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities Regulated by the Agencies and Request for Comment* (the "Policy Statement"). The comment period on the Policy Statement has been extended to February 7, 2014, and is expected to become effective shortly thereafter.

The Policy Statement takes into account Section 342(b)(4) of the Dodd-Frank Act which provides that nothing in paragraph (2)(C) of the Act may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity or to require any specific action based on the findings of the assessment. As a result, the banking agencies will not use the traditional examination or supervision process to assess whether the proposed standards are being met, but will rely on voluntary self-assessments and monitoring of entity websites.

An assessment of diversity policies and practices by the entities regulated by the agencies may include factors as follows:

1. Organizational commitment to diversity and inclusion which includes diversity and inclusion considerations in both employment and contracting as an important part of its strategic plan including hiring, recruiting, retention and promotion. This would include a diversity and inclusion policy that is approved and supported by senior leadership, including senior management and the board of directors.
2. Workforce profile and employment practices that create diverse applicant pools for both internal and external opportunities which may include: outreach to minority and women organizations; outreach to educational institutions serving significant minority and women student populations; and participation in conferences, workshops, and other events to attract minorities and women and inform them of employment and promotion opportunities.
3. Procurement and business practices that includes a supplier diversity policy which provides for a fair opportunity for minority-owned and women-owned businesses to compete in procurements of business goods and services. This would include practices to promote a diverse supplier pool which may include: outreach to minority-owned and women-owned contractors and representative organizations; participation in conferences, workshops and other events to attract minority-owned and women-owned firms and inform them of contracting opportunities; and an ongoing process to publicize its procurement opportunities.
4. Practices to promote transparency of organizational diversity and inclusion which provides transparency in entity activities regarding diversity and inclusion making the following information available to the public annually through its public communication methods to include: its diversity and inclusions strategic plan; its commitment to diversity and inclusion; and its progress toward achieving diversity and inclusion in its workforce and procurement activities which may include the following: current workforce and supplier demographic profiles; current employment and procurement opportunities; forecasts of potential employment and procurement opportunities; and availability and use of mentorship in development programs for employees and contractors.

In developing the standards proposed in the Policy Statement, the agencies believe that the term "assessment" contemplates both self-assessment and an opportunity for the agencies and the public to understand the diversity policies and practices of bank regulated entities. A model assessment would include: a self-assessment utilizing the proposed standards to conduct a quantitative and qualitative evaluation of the diversity and inclusion policies and practices; voluntary disclosure to the appropriate agency of the self-assessment and the other information the entity deems relevant and disclosure of information on its public website and in its annual reports and other materials regarding its efforts to comply with the proposed policy standards as an opportunity for more public awareness and understanding of its diversity policies and practices.

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