

Minority Views on H.R. 992

Nearly three years after the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, adoption of the derivatives and banking rules seems to have stalled. The so-called “push-out rule,” as section 716 of the Dodd-Frank Act is called, does not itself need implementing rules. Other rules under the Dodd-Frank Act, however, are very important to lowering the risks of bank derivatives and trading activities, particularly the “Volcker Rule.” The Volcker Rule is intended to draw a line between hedging and market making, on the one hand, and proprietary trading, on the other, and prohibits banks from engaging in proprietary trading. That rule remains stalled between the agencies, which has important implications for the activities that remain within a bank.

A workable final version of the Volcker Rule will ensure that the regulators have the tools necessary to adequately oversee and examine the trading activities of banks and their affiliates. As we have seen from the delays in the finalization of the Volcker Rule, it is difficult to distinguish between hedging or market-making as opposed to proprietary trading. We are not comfortable expanding the kinds of swap activities that are permitted within depository institutions, including swaps related to commodities, equities, and certain structured finance swaps used for what we know to be the currently ill-defined exception of “hedging,” when we still don’t know the scope of the market-making and hedging exemptions that will be provided under the Volcker Rule.

We saw the importance of this very clearly in JPMorgan Chase’s “London Whale,” in which the bank lost more than \$6 billion in short order when its Chief Investment Office put on a large position in risky derivatives that was purportedly for the purpose of “hedging,” but that focused foremost on profit and would best be described as proprietary.

Allowing commodity, equity, and certain other types of swaps to remain in banks, without knowing that those activities will be subject to adequate monitoring and oversight, is not something that we believe is appropriate at the present time. For that reason, until we see a final version of the Volcker Rule that allows the regulators to adequately monitor the trading of the banks and their affiliates, we will not support this bill.

We are sensitive to the concern that under Section 716, foreign banks are not afforded the same hedging and market-making exemptions that US institutions receive, but this is something we believe that the Federal Reserve has the authority to address. It is important to ensure that we have a complete set of workable rules before we reverse some of the pieces that were done as part of the Dodd-Frank Act. While some supporters claim that H.R. 992 protects taxpayers by maintaining the push-out for the riskiest swaps, obviously even these supporters see some benefit to continuing to push out at least some transactions.

We also note that the Secretary of the Treasury has opposed this and other derivatives bills as the agencies continue to work on completing the rules required under the Dodd-Frank Act.

For these reasons, we oppose H.R. 992.

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