



**FOR IMMEDIATE RELEASE:**

## **Volcker Rule Report Card: Occupy the SEC Gives the Volcker Rule a Grade of “C-”**

***Despite Robust Regulatory Provisions in Areas Such as Extraterritoriality and CEO Certification, Numerous Flaws Remain***

*New York, NY – December 10, 2013*

On December 10, 2013, the Federal Reserve, the Office of the Comptroller of the Currency (“OCC”), Federal Deposit Insurance Corp. (“FDIC”), The Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) (“Agencies”) approved a final version of regulations implementing Section 619 of the Dodd-Frank Act, better known as the “Volcker Rule.”

### **About the Volcker Rule**

The Volcker Rule was passed in order to help avert another financial crisis similar to the Great Recession of 2008. That crisis was caused in large part by excessive bank speculation in trading markets, and the Volcker Rule seeks to reduce the risk associated with these activities by prohibiting proprietary trading by government-backstopped banks. The final Volcker Rule’s restriction on proprietary trading remains subject to numerous exemptions and loopholes. For instance, the Final Rules clarify statutory exemptions for permitted activities, including market making, underwriting, hedging, trading in certain government obligations, and organizing and offering a hedge fund or private equity fund, among others.

### **OSEC’s Involvement in Shaping the Final Rule**

In February 2012, Occupy the SEC (“OSEC”) issued a 325-page comment letter to the banking regulators urging vigorous and robust implementation of Section 619. OSEC also issued letters to members of Congress in the summer of 2012 during the government’s investigation into JP Morgan’s “London Whale” \$6 billion trading loss, which could have been averted with a strongly enforced Volcker Rule. In February 2013, OSEC filed a lawsuit against the above-mentioned financial regulators and the Department of Treasury for their delay in implementing the Volcker Rule, which by Congressional mandate should have been finalized by October 2011. Today’s Final Rule, as approved by the regulators, contains close to 300 citations to OSEC’s February

2012 comment letter.

### **OSEC's Initial Reaction to the Final Rule**

These citations demonstrate that the Agencies carefully considered OSEC's comments and suggestions. The regulators are to be commended for certain features of the Final Rule. For instance, OSEC is heartened that the Final Rule includes a CEO certification requirement, in recognition of the inordinate influence that bank executives have in setting the company tone on regulatory compliance. Even so, OSEC remains deeply concerned about numerous provisions. For instance:

1. The Final Rule inappropriately defines the scope of "covered funds." Section 619 permitted regulators to limit bank investment into private equity funds, hedge funds, and "any other such similar funds." The Agencies did not adequately use their authority to include "similar funds" into the scope of the prohibition. This omission paves the way for bank holding companies to evade the Volcker Rule by shifting their proprietary trading activities away from hedge funds into other, non-covered funds. For instance, recent reports suggest that Goldman Sachs intends to avoid the Volcker restrictions by focusing some of its speculative activities in Business Development Companies, which are not only exempt from Volcker compliance, but are also eligible for relaxed oversight and compliance responsibilities under the JOBS Act.
2. Recent reports had suggested that the Final Rule unambiguously closed the loophole for portfolio hedging, in response to the political fallout from J.P. Morgan's London Whale fiasco. However, the actual language of the Final Rule is not as clear-cut in rejecting the use of macro-level hedging strategies. For instance, the Rule allows hedging to occur on an aggregated basis and across multiple trading desks, without adequate safeguards for particularized identification of risk.
3. The Final Rule exempts repurchase agreements ("repos") from the Volcker Rule's ambit, despite the pernicious role that such agreements played in the credit crisis of 2008.

The Final Rule becomes effective April 1, 2014, and banks have until at least July 21, 2015 to conform their activities to the Rule.

OSEC will be issuing a more detailed analysis of the Rule shortly, in addition to continuing its advocacy initiatives to encourage the regulators to strictly enforce the Volcker Rule for the benefit of the public.

**Occupy the SEC** is a group of concerned citizens, activists, and financial professionals that works to ensure that financial regulators protect the interests of the public, not Wall Street. For further information, visit <http://occupythesecc.org> or email [info@occupythesecc.org](mailto:info@occupythesecc.org).