

HEARING REPORT

From: Patton Boggs LLP
Date: February 4, 2010
Subject: Mortgage Update: Senate Banking Committee Holds Two Hearings on the Obama Administration's "Volcker Rule"

On February 2 and 4, 2010, the Senate Banking Committee held two hearings examining the President's recently announced proposal to limit the scope of proprietary trading activities and the size of bank holding companies via a "Volcker rule."

There appeared to be a lack of political traction for the Volcker rule. Chairman Christopher Dodd (D-CT) noted the need to move forward on regulatory reform legislation and appeared opposed to including the Volcker rule in a bill because of its adverse impact on the process of passing legislation in the near future. Ranking Member Shelby (R-AL) expressed skepticism that the Volcker rule addressed the heart of the problem of systemic risk. Highlights of the discussion included:

- **Need for Further International Consensus on the Volcker Rule.** A witness emphasized the need for international consensus on regulatory reform proposals with the increasing convergence of businesses. The G20 has not yet reviewed the Volcker rule.
- **Lack of Detail in the Administration's Definitions.** Concern was expressed over the lack of a clear definition of "proprietary trading" among other terms.
- **Interconnectedness as the Root Source of Systemic Risk, Rather Than Institution's Market Share/Size.** Several witnesses emphasized that regulators should focus on the interconnectedness of firms as an indication of systemic risk of a financial institution, rather than the Volcker rule's emphasis on the size of an institution's market share of liabilities.

Senate Banking Chairman Christopher Dodd (D-CT) indicated that he would like to hear more on how the Administration's proposals will be applied to help consumers. Sen. Schumer (D-NY) expressed strong support for creation of a Consumer Financial Protection Agency (CFPA). Sen. Schumer compared the U.S. system with the system in Canada, pointing out that Canada has a consumer protection agency and a less than 1% foreclosure rate as compared to a 10% rate in the U.S. Paul Volcker, Chairman of the President's Economic Recovery Advisory Board, responded that in Canada the mortgage market is dominated by commercial banks and thus they have an incentive to apply more conservative practices. Additionally, he noted that there is no Fannie or Freddie in Canada and no political pressure to push down mortgage rates. Volcker also indicated he did not know much about Canada's Consumer Protection agency and its past effects on the Canadian mortgage market. Sen. Schumer interpreted this answer as an indication Volcker is neutral on the CFPA proposal.