

## CEO Certification for Prime Brokerage Transactions

18. When is a banking entity required to submit the annual CEO certification for prime brokerage transactions required by §351.14(a)(2)(ii)(B) of the final rule? What about legacy covered funds?

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Section 351.14(a)(1) of the final rule prohibits a banking entity that serves, directly or indirectly, as the investment manager, investment adviser, commodity trading advisor, or sponsor to a covered fund, that organizes and offers a covered fund pursuant to §351.11 of the final rule or that holds an ownership interest in accordance with §351.11(b), and any affiliate of the banking entity, from entering into a covered transaction as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(7)) with the covered fund or with any other covered fund that is controlled by such covered fund. Notwithstanding this prohibition, §351.14(a)(2) provides that a banking entity may enter into any prime brokerage transaction<sup>1</sup> with any covered fund in which a covered fund managed, sponsored, or advised by such banking entity (or an affiliate) has taken an ownership interest, so long as the conditions enumerated in the final rule are satisfied.<sup>2</sup> One of the conditions requires a written CEO certification annually.<sup>3</sup>

Staffs of the Agencies believe that banking entities that are required to provide the annual CEO certification for prime brokerage transactions as of the end of the conformance period should submit the first CEO certification required under §351.14 after the end of the conformance period but no later than March 31, 2016.<sup>4</sup> A banking entity may provide the required annual certification in writing at any time prior to the March 31 deadline to the relevant Agency.

The conformance period for investments in and relationships with a legacy covered fund (i.e., a covered fund sponsored or owned by a banking entity prior to December 31, 2013) currently ends on July 21, 2016.<sup>5</sup> Banking entities that engage in prime brokerage transactions with legacy covered funds should submit their first CEO certification by March 31 following the end of the relevant conformance period.

In any case, a banking entity should provide the CEO certification annually within one year of its prior attestation. Moreover, under the final rule, the CEO has a duty to update the certification if the information in the certification materially changes at any time during the year when he or she becomes aware of the material change.

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<sup>1</sup> The final rule defines “prime brokerage transaction” to mean any transaction that would be a covered transaction, as defined in section 23A(b)(7) of the Federal Reserve Act (12 U.S.C. 371c(b)(7)), that is provided in connection with custody, clearance and settlement, securities borrowing or lending services, trade execution, financing, or data, operational, and administrative support. See 12 CFR 351.10(d)(7).

<sup>2</sup> See 12 CFR 351.14(a)(2) & (c); see also 79 FR at 5747.

<sup>3</sup> See 12 CFR 351.14(a)(2)(ii)(B).

<sup>4</sup> See FAQ #7 <https://www.fdic.gov/regulations/reform/volcker/faq/attestation.html> (“The staffs of the Agencies believe that banking entities subject to Appendix B as of the end of the conformance period should submit the first CEO attestation required under Appendix B after the end of the conformance period but no later than March 31, 2016.”).

<sup>5</sup> The Board granted banking entities until July 21, 2016 to conform investments in and relationships with covered funds that were in place prior to December 31, 2013 and announced its intention to act next year to grant banking entities until July 21, 2017 to conform investments in and relationships with legacy covered funds. See Board Order Approving Extension of Conformance Period under Section 13 of the Bank Holding Company Act (December 18, 2014), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20141218a.htm>. A banking entity would thus have until July 21, 2017 to conform its relationships with legacy covered funds.