

DuaneMorris

# Bank Holding Company Act Application to Private Funds

Steven J. Gray  
*March 2016*

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# Volcker Rule

- Section 13 of the Bank Holding Company Act, commonly known as the “Volcker Rule,” was adopted as part of the Dodd-Frank banking system reforms following the financial crisis of 2008
- The Volcker Rule:
  - Prohibits banks from investing as principal in “covered funds”
    - “Covered funds” include hedge funds and private equity funds
  - Imposes strict limits on when a bank can “sponsor” a covered fund
  - Permits investing in a covered funds on behalf of third parties when acting as fiduciary, trustee, custodian, broker or agent
- Compliance deadline for selling or spinning off private fund investments is July 21, 2017

# Bank Control Regulations

- Bank Holding Company Act (“BHC Act”) regulates bank holding companies and affiliates
  - Any entity that acquires a “controlling” interest in a U.S. bank or bank holding company must register with the Federal Reserve
  - Results in significant regulatory oversight, reporting requirements, activity limitations and investment restrictions
  - Control is deemed to occur upon ownership of 25% of the voting equity securities of a bank or bank holding company, and may occur with ownership of 5% depending on the facts and circumstances
  - Possible to own up to 33% of nonvoting equity provided ownership of voting equity is less than 15%
  - Non-controlling investments of between 10% and 25% usually require passivity commitments
- BHC Act applies only to private funds that own or invest in banks or bank holding companies

## Further Information

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