

## **PROPOSED GUIDANCE GENERALLY EXEMPTS SEPARATE ACCOUNT BOLI FROM “VOLCKER RULE”**

Clark Consulting previously alerted you regarding the enactment of Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the so-called “Volcker Rule”) and concerns that had arisen regarding its potential impact on separate account bank-owned life insurance (“BOLI”) arrangements. We are pleased to inform you that proposed interagency guidance (the “Proposed Guidance”) released today clarifies that the Volcker Rule will not apply to typical separate account BOLI arrangements. A copy of the Proposed Guidance can be found at <http://fdic.gov/news/board/2011Octno6.pdf> (see pages 149-150 for a description of the Proposed Guidance on separate account BOLI and page 245 for the proposed rule text).

The Volcker Rule amended the Bank Holding Company (“BHC”) Act by adding new “Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds & Private Equity Funds.” A part of the Volcker Rule prohibits a banking entity from acquiring or retaining ownership in a “hedge fund” or “private equity fund.” There was concern that the terms “hedge fund” and “private equity fund” under the Volcker Rule were defined broadly enough to include, if read literally, certain separate account bank-owned life insurance (BOLI) products issued pursuant to a private placement – despite the fact that such products may not be what are typically considered “hedge funds” or “private equity funds”.

Clark Consulting and others submitted comments to regulators urging that they clarify that the purchase and holding of private placement separate account BOLI is permissible under the Volcker Rule. The Proposed Guidance released today responds favorably to those comments.

The Proposed Guidance acknowledges that banking entities have for many years purchased life insurance policies that cover key employees, in accordance with supervisory policies established by the Federal banking agencies. And, while these BOLI policies could be covered by the definition of “hedge fund” or “private equity fund,” the Proposed Guidance indicates that when made in the normal course, these BOLI policies do not involve the speculative risks intended to be addressed by the Volcker Rule. Moreover, the Proposed Guidance states, applying the Volcker Rule prohibitions to these insurance policies would eliminate a financial vehicle that helps banking entities to reduce their costs of providing employee benefits as well as other costs.

The Proposed Guidance generally permits banking entities to purchase and hold separate account BOLI policies subject to satisfaction of conditions that such arrangements already typically satisfy. In particular, in order for a banking entity to purchase or sponsor a BOLI separate account, the banking entity that purchases the insurance policy: (i) may not control the investment decisions regarding the underlying assets or holdings of the separate account; and (ii) must hold its ownership interests in the separate account in compliance with applicable supervisory guidance provided by the appropriate Federal regulatory agency regarding BOLI.

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The current BOLI regulatory agency guidance referenced in the Proposed Guidance is “Bank Owned Life Insurance, Interagency Statement on the Purchase and Risk Management of Life Insurance” (“Interagency BOLI Guidance” also referred to as “OCC 2004-56”) (Dec. 7, 2004). The Proposed Guidance notes that other guidance or requirements may be imposed by bank regulatory agencies or by an individual agency for a specific banking entity for which it serves as the primary financial regulator. The Proposed Guidance states that, at a minimum, separate account BOLI policies under its authority must comply with the Interagency BOLI Guidance, which requires, among other things, that a banking entity generally: (i) not control the investment decisions regarding the underlying assets or holdings of the separate account; (ii) demonstrate to the satisfaction of the relevant banking agency that the potential returns from the investments in such separate account are appropriately matched to the banking entity’s employee compensation or benefit plan obligations; and (iii) not use such separate account to take speculative positions or to support the general operations of the banking entity.

According to the Proposed Guidance, the regulatory agencies have structured the separate account BOLI exemption so as to allow a banking entity to continue to manage and structure its risks and obligations related to its employee compensation or benefit plan obligations in a manner that promotes and protects the safety and soundness of banking entities, which on an industry-wide level has the concomitant effect of promoting and protecting the financial stability of the United States. Clark Consulting is pleased that the Proposed Guidance recognizes the continued importance of separate account BOLI arrangements.

The Proposed Guidance is now open to public comment through January 13, 2012. After the comment period, the regulatory agencies will issue a final version of the guidance. Please feel free to contact your Clark Consulting representative should you have any questions on this issue or any other questions you may have regarding your BOLI portfolio.

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