

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4790
OFFERED BY MR. FOSTER OF ILLINOIS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “The Volcker Rule Reg-
3 ulatory Harmonization Act”.

**4 SEC. 2. RULEMAKING AUTHORITY UNDER THE VOLCKER
5 RULE.**

6 (a) IN GENERAL.—Paragraph (2) of section 13(b) of
7 the Bank Holding Company Act of 1956 (12 U.S.C.
8 1851(b)(2)) is amended to read as follows:

9 “(2) RULEMAKING.—

10 “(A) IN GENERAL.—The Board may, as
11 appropriate, consult with the Comptroller of the
12 Currency, the Federal Deposit Insurance Cor-
13 poration, the Securities and Exchange Commis-
14 sion, or the Commodity Futures Trading Com-
15 mission to adopt rules or guidance to carry out
16 this section, as provided in subparagraph (B).

1 “(B) RULEMAKING REQUIREMENTS.—In
2 adopting a rule or guidance under subpara-
3 graph (A), the Board—

4 “(i) shall consider the findings of the
5 report required in paragraph (1) and, as
6 appropriate, subsequent reports;

7 “(ii) shall assure, to the extent pos-
8 sible, that such rule or guidance provide
9 for consistent application and implementa-
10 tion of the applicable provisions of this sec-
11 tion to avoid providing advantages or im-
12 posing disadvantages to the companies af-
13 fected by this subsection and to protect the
14 safety and soundness of banking entities
15 and nonbank financial companies super-
16 vised by the Board; and

17 “(iii) shall include requirements to en-
18 sure compliance with this section, such as
19 requirements regarding internal controls
20 and recordkeeping.

21 “(C) AUTHORITY.—The Board shall have
22 sole authority to issue and amend rules under
23 this section after the date of the enactment of
24 this paragraph.

25 “(D) CONFORMING AUTHORITY.—

1 “(i) CONTINUITY OF REGULATIONS.—
2 Any rules or guidance issued under this
3 section prior to the date of enactment of
4 this paragraph shall continue in effect
5 until the Board issues a successor rule or
6 guidance, or amends such rule or guidance,
7 pursuant to subparagraph (C).

8 “(ii) APPLICABLE GUIDANCE.—In per-
9 forming examinations or other supervisory
10 duties, the appropriate Federal banking
11 agencies, the Securities and Exchange
12 Commission, and the Commodity Futures
13 Trading Commission, as appropriate, shall
14 update any applicable policies and proce-
15 dures to ensure that such policies and pro-
16 cedures are consistent (to the extent prac-
17 ticable) with any rules or guidance issued
18 pursuant to subparagraph (C).”.

19 (b) CONFORMING AMENDMENTS.—Section 13 of the
20 Bank Holding Company Act of 1956 (12 U.S.C. 1851)
21 is amended—

22 (1) by striking “the appropriate Federal bank-
23 ing agencies, the Securities and Exchange Commis-
24 sion, and the Commodity Futures Trading Commis-

1 sion,” each place it appears and inserting “the
2 Board”;

3 (2) by striking “appropriate Federal banking
4 agencies, the Securities and Exchange Commission,
5 and the Commodity Futures Trading Commission”
6 and inserting “Board”;

7 (3) in subsection (c)(5), by striking “Notwith-
8 standing paragraph (2)” and all that follows
9 through “provided in subsection (b)(2),” and insert-
10 ing “The Board shall have the authority”; and

11 (4) in subsection (d)(1)—

12 (A) in subparagraph (F)(ii)—

13 (i) by striking “the appropriate Fed-
14 eral banking agencies” and inserting “the
15 Board”; and

16 (ii) by striking “have not jointly” and
17 inserting “has not”; and

18 (B) in subparagraph (G)(viii), by striking
19 “appropriate Federal banking agencies, the Se-
20 curities and Exchange Commission, or the Com-
21 modity Futures Trading Commission,” each
22 place it appears and inserting “Board”.

1 **SEC. 3. ENFORCEMENT; ANTI-EVASION.**

2 (a) IN GENERAL.—Subsection (e) of section 13 of the
3 Bank Holding Company Act of 1956 (12 U.S.C. 1851(e))
4 is amended to read as follows:

5 “(e) ENFORCEMENT; ANTI-EVASION.—

6 “(1) APPROPRIATE FEDERAL BANKING AGEN-
7 CY.—Notwithstanding any other provision of law ex-
8 cept for any rules or guidance issued under sub-
9 section (b)(2), whenever the appropriate Federal
10 banking agency has reasonable cause to believe that
11 a banking entity or nonbank financial company su-
12 pervised by the Board has made an investment or
13 engaged in an activity in a manner that either vio-
14 lates the restrictions under this section, or that
15 functions as an evasion of the requirements of this
16 section (including through an abuse of any permitted
17 activity), such appropriate Federal banking agency
18 shall order, after due notice and opportunity for
19 hearing, the banking entity or nonbank financial
20 company supervised by the Board to terminate the
21 activity and, as relevant, dispose of the investment.

22 “(2) SECURITIES AND EXCHANGE COMMISSION
23 AND COMMODITY FUTURES TRADING COMMISSION.—

24 “(A) IN GENERAL.—Notwithstanding any
25 other provision of law except for any rules or
26 guidance issued under subsection (b)(2), when-

1 ever the Securities and Exchange Commission
2 or the Commodity Futures Trading Commis-
3 sion, as appropriate, has reasonable cause to
4 believe that a covered nonbank financial com-
5 pany for which the respective agency is the pri-
6 mary Federal regulator has made an investment
7 or engaged in an activity in a manner that ei-
8 ther violates the restrictions under this section,
9 or that functions as an evasion of the require-
10 ments of this section (including through an
11 abuse of any permitted activity), the Securities
12 and Exchange Commission or the Commodity
13 Futures Trading Commission, as appropriate,
14 shall order, after due notice and opportunity for
15 hearing, the covered nonbank financial company
16 to terminate the activity and, as relevant, dis-
17 pose of the investment.

18 “(B) COVERED NONBANK FINANCIAL COM-
19 PANY DEFINED.—In this paragraph, the term
20 ‘covered nonbank financial company’ means a
21 nonbank financial company (as defined in sec-
22 tion 102 of the Financial Stability Act of 2010)
23 supervised by the Securities and Exchange
24 Commission or the Commodity Futures Trading
25 Commission, as appropriate.”.

1 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed to abrogate, reduce, or eliminate
3 the backup authority of the Federal Deposit Insurance
4 Corporation authority under the Dodd-Frank Wall Street
5 Reform and Consumer Protection Act (12 U.S.C. 5301
6 et seq.), the Federal Deposit Insurance Act (12 U.S.C.
7 1811), or Federal Deposit Insurance Corporation Im-
8 provement Act of 1991.

9 **SEC. 4. EXCLUSION OF COMMUNITY BANKS FROM VOLCKER**
10 **RULE.**

11 Section 13(h)(1) of the Bank Holding Company Act
12 of 1956 (12 U.S.C. 1851(h)(1)) is amended—

13 (1) in subparagraph (D), by redesignating
14 clauses (i) and (ii) as subclauses (I) and (II), respec-
15 tively, and adjusting the margins accordingly;

16 (2) by redesignating subparagraphs (A), (B),
17 (C), and (D) as clauses (i), (ii), (iii), and (iv), re-
18 spectively, and adjusting the margins accordingly;

19 (3) in the matter preceding clause (i), as so re-
20 designated, in the second sentence, by striking “in-
21 stitution that functions solely in a trust or fiduciary
22 capacity, if—” and inserting the following: “institu-
23 tion—

24 “(A) that functions solely in a trust or fi-
25 duciary capacity, if—”.

1 (4) in clause (iv)(II), as so redesignated, by
2 striking the period at the end and inserting “; or”;
3 and

4 (5) by adding at the end the following:

5 “(B) that does not have and is not con-
6 trolled by a company that has—

7 “(i) more than \$10,000,000,000 in
8 total consolidated assets; and

9 “(ii) total trading assets and trading
10 liabilities, as reported on the most recent
11 applicable regulatory filing filed by the in-
12 stitution, that are more than 5 percent of
13 total consolidated assets.”.

