WASHINGTON - The Office of the Comptroller of the Currency's move this week to solicit feedback on rolling back the Volcker Rule was only the first step in a long process, yet observers say it shows how fractured the five agencies tasked with implementing the proprietary trading ban have become.

In theory, the regulators tasked with handling the complex rulemaking have all signaled they believe it's too complicated and needs to be revised. But acting Comptroller of the Currency Keith Noreika jumped out in front by issuing a proposal asking for ways to simplify it.

"What's happened in the past is each agency issues a similar proposal at the same time under the banner-head of all the agencies," said Gerard V. Comizio, a partner at Fried Frank. "Clearly this has been handled differently here."

The agencies have been slowly drifting toward Volcker Rule reform, including with a meeting at the Financial Stability Oversight Council on Friday to discuss how to move forward. But that process appears to have been too slow for Noreika, who is not expected to be in the job much longer once his permanent successor is confirmed.

He "is front-running the other agencies, that's for sure," said Karen Shaw Peterou, a managing partner at Federal Financial Analytics. "It has the advantage of generating hopefully useful public comment, to which the other agencies can't say no."

The unorthodox move is also likely to keep Volcker Rule reform front in center in the debate over financial deregulation. That doesn't necessarily mean it will speed up the process for simplifying the rule, however, according to observers.

The move "will put pressure on the other agencies to conduct their own review process," said James Wigand, a partner at Millstein & Co. and former official at the Federal Deposit Insurance Corp. "But whether or not it actually results in the other agencies proceeding more quickly, I think is a big question mark."

The Volcker Rule, though simple in theory, emerged as one of the most challenging measures of the Dodd-Frank Act.
It took years for the five regulators - the OCC, Federal Reserve Board, FDIC, Securities and Exchange Commission and Commodity Futures Trading Commission - to come to an agreement on the rule's implementation.

And it could take several more to untangle the four separate regulations they ultimately settled on.

"Volcker hits the intersection between financial institutions and markets. And we regulate financial institutions very differently than we regulate markets," said Aaron Klein, the policy director at the Brookings Institution's Center on Regulation and Markets. "As strange as many of the Volcker Rule elements may seem in principle, there was a rationale behind many of the compromises that led to the existing rule."

At the same time, the Volcker Rule may become a principal talking point in a priority for the Trump administration: regulatory harmonization.

In its June report, the Treasury explicitly recommended that overlapping regulations be assigned to a single agency.

The FSOC could have "the authority to appoint a lead regulator on any issue on which multiple agencies may have conflicting and overlapping regulatory jurisdiction," the report said.

The OCC's move could be seen as a way to volunteer to take on that role for the Volcker Rule, though unless the statute itself was changed, the other agencies would have to be consulted.

Some said little can happen until the new administration has had a chance to replace all the existing regulators.

"The FDIC is not going to be helpful until we have a new chairman, and the Federal Reserve is not going to be helpful until the chairman is replaced. And that's not going to be for another year," said J.W. Verret, a senior scholar at the Mercatus Center. "It's all turf warfare."

The Senate approved four of five board members for the CFTC on Thursday, but they likely will need at least some time before turning their attention to the Volcker Rule. Meanwhile, Noreika's successor, Joseph Otting, is also awaiting confirmation.

That makes the task of tackling the Volcker Rule extremely difficult.

"It's like having an infield when you're short a second base," Comizio said.

As a result, some see Noreika's move as a political ploy to get ahead of the issue during his temporary stay in office.

"This appears to be trying to serve the interest of one firm or a very small number of firms," said Andy Green, the managing director of economic policy at the Center for American Progress and a former staffer of Sen. Jeff Merkley, D-Ore., who helped draft the Volcker Rule.

"It strikes me as undermining the core principle that many of Volcker's critics have had, which is that you need better coordination."

Others said Noreika's move is an indication that he might be aggressive enough to begin hacking away at aspects of the rule on his own.

"No one is sure where the line is drawn between interpretation" of the law, which must be a joint exercise with the other agencies, "and one-on-one interaction between an agency and the bank it regulates," said Doug Landy, a partner at Milbank, Tweed, Hadley & McCloy. "There might be actions that you can take along the edges there solo."


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