

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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ERIC TAYLOR and
KRISTINE EKMAN

Plaintiffs,

-against-

BEN BERNANKE, in his official capacity as
Chairman of the Board of Governors of the Federal
Reserve System; MARTIN J. GRUENBERG, in
his official capacity as Chairman of the Federal
Deposit Insurance Corporation; ELISSE B.
WALTER, in her official capacity as Chairperson
of the U.S. Securities and Exchange Commission;
GARY GENSLE, in his official capacity as
Chairman of the U.S. Commodity Futures Trading
Commission; THOMAS J. CURRY, in his official
capacity as Comptroller at the Office of the
Comptroller of the Currency, U.S. Department of
the Treasury, MARY J. MILLER, in her capacity as
Under Secretary for Domestic Finance, U.S.
Department of the Treasury; NEAL WOLIN, in his
official capacity as Acting Secretary and Deputy
Secretary of the Treasury at the U.S. Department
of the Treasury.

Defendants.
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CV 13 -
COMPLAINT

1013

Case No.

ROSS, J.

AZRACK, M.J.

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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Plaintiffs, by and through their attorney Akshat Tewary, for their complaint against
Defendants allege upon knowledge and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. This action seeks declaratory, injunctive and mandamus relief under the
Administrative Procedure Act ("APA") and this Court's mandamus powers to compel the
Defendants, in their capacities as officers or employees of federal agencies, to issue a joint Final
Rulemaking under 12 U.S.C. § 1851 ("Volcker Rule"), Section 619 of the Dodd-Frank Wall

Street Reform and Consumer Protection Act of 2010 ("Dodd Frank Act"). Plaintiffs have a clear right to the relief sought, and there is no adequate remedy at law. Only the declaratory, injunctive and mandamus relief that this Court can provide will fully redress the continuing wrongs done to Plaintiffs.

JURISDICTION AND VENUE

2. This case relates to the rulemaking process by federal agencies, and thereby presents a federal question within this Court's jurisdiction under 28 U.S.C. § 1331.

3. This case involves a request for mandamus relief, thereby affording this Court an additional basis for subject matter jurisdiction, under 28 U.S.C. § 1361.

4. Venue is proper in this district court under 28 U.S.C. § 1391(e)(3) as defendants are officers or employees of the United States, plaintiffs reside in this district, and no real property is involved in the action.

PARTIES

5. Plaintiff Eric Taylor is a 30 year-old U.S. citizen residing in Brooklyn, NY. Mr. Taylor has deposits in a checking account held by JPMorgan Chase Bank, N.A., which is a national bank and a U.S. insured depository institution. Mr. Taylor is also a member of Occupy the SEC, an unincorporated association that advocates for regulatory reforms in the banking and financial system.

6. Plaintiff Kristine Ekman is a 36 year-old U.S. citizen residing in Brooklyn, NY. Ms. Ekman has deposits in a checking account held by Wells Fargo Bank, N.A., which is a national bank and a U.S. insured depository institution. Ms. Ekman is also a member of Occupy the SEC, an unincorporated association that advocates for regulatory reforms in the banking and financial system.

7. Defendant Ben Bernanke is the Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve"). As the Chairman of the Federal Reserve, Chairman Bernanke has authority over all Federal Reserve policies and procedures, including that agency's role in the rulemaking process for the Volcker Rule.

8. Defendant Martin J. Gruenberg is the Chairman of the Federal Deposit Insurance Corporation ("FDIC"). As the Chairman of the FDIC, Chairman Gruenberg has authority over all FDIC policies and procedures, including that agency's role in the rulemaking process for the Volcker Rule.

9. Defendant Elisse B. Walter is the Chairperson of the U.S. Securities and Exchange Commission ("SEC"). As the Chairperson of the SEC, Chairman Walter has authority over all SEC policies and procedures, including that agency's role in the rulemaking process for the Volcker Rule.

10. Defendant Thomas J. Curry, is the Comptroller at the Office of the Comptroller of the Currency ("OCC"), U.S. Department of the Treasury. As Comptroller at the OCC, Comptroller Curry has authority over all OCC policies and procedures, including that agency's role in the rulemaking process for the Volcker Rule.

11. Defendant Mary J. Miller, is the Under Secretary for Domestic Finance, U.S. Department of the Treasury ("Treasury"). In her official capacity, Under Secretary Miller is responsible for coordinating the rulemaking efforts of the Federal Reserve, the SEC, the OCC, the FDIC and the CFTC in connection with their finalization of the Volcker Rule.

12. Defendant Neal Wolin, is the Acting Secretary and Deputy Secretary of the U.S. Department of the Treasury. Under 12 U.S.C. § 1851(b)(2)(B)(iii), the Chairperson of the Financial Stability Oversight Council ("FSOC") shall be responsible for coordination of the regulations under the Volcker Rule. Acting Secretary Wolin is the Chairperson of the FSOC.

FACTUAL ALLEGATIONS

I. Speculative Activities by Deposit-taking Banking Institutions and the Passage of the Volcker Rule

13. The Glass-Steagall Act of 1933 protected bank depositors from market fluctuations by prohibiting retail banks from engaging in most trading activities. That law generally required a structural separation of retail banks from investment banks. The Financial Services Modernization Act of 1999 repealed parts of the Glass-Steagall Act, allowing investment, depository, and insurance activities to become increasingly intertwined.

14. By the time of the global financial crisis of 2008, deposit-taking banks were actively engaged in “proprietary” (speculative) trading activities that put bank deposits at risk and proliferated that risk across the industry. In 2009 the International Monetary Fund (“IMF”) estimated that U.S. banks and financial institutions faced losses of \$4 trillion from toxic assets. The recent financial crisis is regarded as the worst since the Great Depression.

15. Congress passed the Volcker Rule in 2010 in order to re-orient deposit-taking banks towards safe, traditional banking activities (like offering checking accounts and making loans to individuals and businesses), and away from the kind of speculation that has imperiled deposited funds as well as the global economy at large. *See* 156 Cong. Rec. S5894 (daily ed. July 15, 2010) (statement of Sen. Merkley) (defining the purpose of Section 619 of the Dodd-Frank Act as generally restraining the type of high-risk proprietary trading that can undermine an insured depository institution).

16. Almost three years since the passage of the Dodd-Frank Act, Defendants have yet to finalize regulations implementing the Volcker Rule. While some banks have pared down their proprietary trading activities in anticipation of a fully implemented Volcker Rule, such activities nevertheless persist, thereby putting at risk money that is held by bank depositors like the

Plaintiffs. The longer the delay in the Volcker Rule's final implementation, the greater the risk that is placed on the Plaintiffs' deposits.

II. Congress's Mandatory Timeframe for Implementation of the Volcker Rule

17. Section 619(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. § 1851(b)(2)(A)) amends the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) at § 13(b)(2) to specify that the agencies under the Defendants' control "shall" adopt rules carrying out the provisions of § 619 within nine (9) months after the completion of a study by FSOC relating to the Volcker Rule. The FSOC completed that study in January 2011. As of February 2013, the Defendants have yet to heed 12 U.S.C. § 1851(b)(2)(A)'s statutory mandate.

18. 12 U.S.C. § 1851(b)(2)(A) is unequivocal in setting this mandatory deadline, which the Defendants and the agencies under their control have missed. The Defendants have unreasonably delayed in finalizing the Volcker Rule. This delay puts Plaintiffs' deposited money at risk, because banks can continue to speculate with it as long as the Volcker Rule has not been implemented.

19. For instance, in April of 2012 it was reported that the Chief Investment Office ("CIO") at the London office of JPMorgan Chase bank had utilized deposited funds, like those of Plaintiffs, to invest in extremely risky, speculative credit default swap indices (derivatives of derivatives). Further, it has recently been reported that other traders at JPMorgan actually bet against the CIO office, virtually guaranteeing that some division within the bank would suffer losses. The latest estimates reveal that the bank suffered approximately \$6 billion in trading losses from the CIO debacle.

20. While depositor funds at JPMorgan remained intact despite these losses, it is uncertain whether another bank (or even JPMorgan itself) would survive another such fiasco, given the high level of interconnectedness and leveraged risk at most bank trading desks. A

properly implemented Volcker Rule would have prohibited JPMorgan from engaging in these speculative bets. JPMorgan's CIO debacle emblemizes the risk that Plaintiffs face from the Defendants' continued delay in implementing the Volcker Rule.

21. Plaintiffs have exhausted all administrative remedies available. As members of Occupy the SEC, Plaintiffs issued a 325 page comment letter petitioning the agencies responsible for the implementation of the Volcker Rule to enact certain modifications and to avoid "any delay in [the Rule's] full and aggressive implementation." OccupytheSEC's Comment Letter re Prohibitions and Restrictions on Proprietary Trading – File S7-41-11 at Ann. A-2 (Feb. 13, 2012), *available at* <http://www.sec.gov/comments/s7-41-11/s74111-230.pdf>. Plaintiffs seek to safeguard their deposits from bank speculation and are consequently relying on the government to implement the Volcker Rule. At this stage, they have no choice but to wait until the Defendants get around to doing that.

22. In January 2013, SEC Commissioner Daniel M. Gallagher indicated in a public speech that he believed there was "no end in sight" for the final implementation of the Volcker Rule and that the agencies would be better off prioritizing other matters. This statement confirms that the Defendants do not intend to issue final regulations for the Volcker Rule in the near future, despite the clear statutory mandate of 12 U.S.C. § 1851(b)(2)(A) (Section 619(b)(2)(A) of the Dodd Frank Act).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of Mandamus Act, 28 U.S.C. § 1361)

23. Plaintiffs incorporate by reference the allegations set forth in ¶¶ 1-22 above, as if fully set forth herein.

24. Under 28 U.S.C. § 1361, this court has jurisdiction to issue a writ of mandamus.

25. The Defendants have a plainly defined and nondiscretionary duty to issue final regulations for the Volcker Rule by a deadline that, at this stage, has long passed. 12 U.S.C. § 1851(b)(2)(A).

26. This nondiscretionary duty is owed to the Plaintiffs, given that the Volcker Rule was written to protect depositors, like Plaintiffs, from speculative excesses by deposit-holding banks.

27. Plaintiffs suffer the risk of irreparable injury to their deposits by reason of Defendants' non-action. The Plaintiffs' bank accounts are subject to potential dissipation or liquidation resulting from bank losses occasioned by excessively risky trading activities by those banks. The Volcker Rule would institute structural safeguards insulating depository accounts from banks' proprietary trading activities, thereby protecting Plaintiffs' bank accounts. Defendants' unjustified delay in finalizing the Volcker Rule puts Plaintiffs' bank accounts at continued risk of financial loss.

28. Plaintiffs are left with no administrative alternatives to effect timely implementation of the Volcker Rule. Plaintiffs, through the advocacy group Occupy the SEC, have already submitted a 325-page comment letter in February 2012 in response to the Proposed Rule promulgated by the five federal agencies responsible for the Volcker Rule rulemaking. That comment letter included a request for quick implementation of the Volcker Rule. At this stage, Plaintiffs are left with no adequate remedy at law. Only the declaratory, injunctive, and mandamus relief that this Court can provide will fully redress the harms to be suffered by Plaintiffs.

SECOND CLAIM FOR RELIEF

(Violation of Administrative Procedure Act, 5 U.S.C. § 706)

29. Plaintiffs incorporate by reference the allegations set forth in ¶¶ 1-28 above, as if fully set forth herein.

30. The Defendants' failure to publish a final regulation for the Volcker Rule within the stipulated deadline established by 12 U.S.C. § 1851(b)(2)(A) constitutes agency action "unlawfully withheld" and "unreasonably delayed," and is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court enter judgment against Defendants and to:

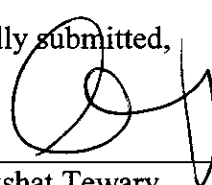
(a) Declare that the Defendants' delay in issuing a Final Rulemaking for the Volcker Rule violates the Dodd-Frank Act;

(b) Grant a permanent injunction and/or order of mandamus compelling Defendants and those acting under them to perform their duty to expeditiously issue a Final Rulemaking for the Volcker Rule, within a timeframe established by the Court.

Respectfully submitted,

Dated: New York, New York
February 25, 2013

By:


Akshat Tewary

** pro hac vice admission pending*
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