

Termination of Market-Making Activity: Treatment of Residual Positions

19. If a banking entity exits a market-making business permitted under the final rule, how may the banking entity sell or unwind its residual market-making positions? How may the banking entity hedge its residual market-making positions under the final rule?

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For business reasons or otherwise, a banking entity may determine to exit a particular line of business or trading activity that is permissible under the final rule. In the event that a banking entity terminates a market-making business that it conducted as a Volcker Rule permitted activity,¹ a situation could occur where the banking entity holds residual positions from its prior market-making activity.

In the view of the Agencies' staffs, the banking entity may hold and dispose of these residual market-making positions, provided (i) the banking entity hedges the risks of any such positions in accordance with the risk-mitigating hedging exemption² and (ii) the banking entity sells or unwinds the residual market-making positions as soon as commercially practicable. If a banking entity holds residual market-making positions and does not hedge the risks of such positions, then the subsequent sales of those residual positions would generally be considered proprietary trading under the final rule implementing section 13 of the BHC Act.³

When hedging the risks of the residual market-making positions, the banking entity must comply with the requirements of the risk-mitigating hedging exemption.⁴ A banking entity cannot rely on the market-making exemption to manage the risks of its residual market-making positions. The market-making exemption only permits risk management activity conducted or directed by a trading desk in connection with the desk's permitted market making-related activities conducted in conformance with all of the requirements of the market-making exemption set forth in the final rule.⁵

¹ See § 351.4(b).

² See § 351.5.

³ See § 351.3(b)(1).

⁴ See § 351.5.

⁵ See § 351.4(b)(2), 79 FR at 5576-5627.