

October 17, 2018

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Comptroller of the Currency
Federal Reserve Board
Commodity Futures Trading Commission
Federal Deposit Insurance Corp
Securities and Exchange Commission

Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

Dear officers,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments in response to the request by the five agencies regarding the rule titled “Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With,

Hedge Funds and Private Equity Funds.”¹ This proposal comes as a joint rulemaking from the Federal Reserve Board (Fed, Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corp. (FDIC), the Commodity Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC). Collectively, we will refer to these regulatory bodies as the “Agencies.”

This proposal addresses Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Volcker Rule.

In overview, we believe these revisions retreat from enforcement of the statute. While we do believe that revisions are important, the Agencies should focus on the need for the Agencies to provide transparency through regular public reporting on compliance with the Volcker Rule, rather than a weakening of enforcement. We believe that the Agencies should adopt a strong rubric for penalties when misconduct is uncovered. We urge the Agencies to adopt strong measures regarding compensation to insure that traders are not rewarded for proprietary trading. We lament the fact that even as the Agencies move to re-write the Volcker Rule a second time, they have failed to implement required compensation reforms which play a large role in incentivizing risky behaviors, even though Congress mandated these rules be completed by May 2011. Finally, the statute provides that Agencies may prohibit market making and investment in covered funds, commonly known as hedge funds. Such a reform would return banking to its core mission of intermediating capital between savers and entrepreneurs who grow the economy through creation and expansion of goods and services. Instead, the proposed revision invites more proprietary trading by relaxing guardrails on market making. Hedging would be permitted without a need for analytic justification, which can make it indistinguishable from proprietary trading. While the proposed revisions will be significant, the Agencies fail to provide any serious economic analysis either of current conditions under the Volcker Rule, or any forecasts of how the revisions will change dynamics.

Named for former Chairman of the Federal Reserve Paul Volcker, the statute restricts speculation activity of banks and their affiliates.² The statute also establishes limits on their investments in private equity and hedge funds.

The Volcker Rule embraces two principles. First, it attempts to reduce unnecessary risk-taking, refocusing banks away from speculation and towards loan-making. Loan-making involves risk, but these risks can be managed by collateral, such as the factory for which a loan is extended for development, or a home behind a bank-originated mortgage. Second, the Volcker Rule declares that federal subsidy should not be used for speculation, but for productive loan making. Proprietary trading, or trading for the bank’s own account, deploys funds made cheap and abundant by taxpayer-backed federal insurance administered by the Federal Deposit Insurance Corp (FDIC) not for productive loan making to grow the economy, but to gambles on the fate of existing assets. In some extreme cases, banks have even gambled that firms would fail. JP Morgan used depositor funds to bet that American Airlines would go bankrupt and pocketed \$400 million. Surely, betting on the financial demise of a major American corporation can serve no socially useful purpose.³

Importance of the Volcker Rule

¹ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL REGISTER (July 17, 2018) <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-13502.pdf>

² *Volcker Rule: Frequently Asked Questions*, FEDERAL RESERVE BOARD, (website visited Sept. 7, 2017) <https://www.federalreserve.gov/bankinfo/volcker-rule/faq.htm>

³ Bartlett Naylor, *TOO Big*, PUBLIC CITIZEN (2016) <https://www.citizen.org/sites/default/files/toobig.pdf>

The Wall Street financial crisis of 2008 drained in excess of \$10 trillion from the American economy, according to estimates reviewed by the U.S. Government Accountability Office,⁴ and by more than \$12 trillion, the equivalent of shuttering the entire national economy for a year, according to another government estimate.⁵

Reckless Wall Street conduct stripped millions of Americans of their homes, their jobs and their savings.⁶ The financial sector caused widespread trauma, reshaping the American psyche. Just as Wall Street's 1929 crash, leading to the Great Depression, changed America for decades, Wall Street's 2008 crisis resulting Great Recession will undoubtedly concuss for years to come.

In response, Congress approved the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act in an attempt to address the reckless conduct that led to the crash.

Proprietary trading figured at the center of the financial crisis. Lehman Brothers invested in and traded intensely in mortgage-back securities, leading the largest bankruptcy in history. Michael Madden a former Lehman Brothers executive, observed that "proprietary trading played a big role in manufacturing CDOs and other instruments that were at the heart of the financial crisis. ... If firms weren't able to buy up parts of these deals that wouldn't sell ... the game would have been stopped a lot sooner."⁷ [CDOs are collateralized debt instruments, or packages of loans, that were traded as securities.] Bear Stearns also failed when several of its sponsored hedge funds suffered losses in their losses on their collateralized debt obligation (CDO) portfolios.⁸ Major bank holding companies such as Bank of America and JP Morgan also traded in high risk products such as CDOs and credit default swaps, leading to major losses. "The 2008 financial crisis and the recession that followed were caused, in large part, by the biggest global banks taking huge risky bets that went bad," concluded Sen. Jeff Merkley (D-Ore.), co-author with former senator Carl Levin (D-Mich.) of the Volcker Rule.⁹

The Basel Committee on Banking observed in a 2009 report that "Since the financial crisis began in mid-2007, the majority of losses and most of the build-up of leverage occurred in the trading book. [The "trading book" is the accounting for propriety trading.] Losses in many banks' trading books during the financial crisis have been significantly higher than the minimum capital requirements."¹⁰

⁴ *Financial Regulatory Reform*, GOVERNMENT ACCOUNTABILITY OFFICE, (January 2013) <https://www.gao.gov/assets/660/651322.pdf>

⁵ *Financial Crisis Losses*, Government Accountability Office (January 2013), *See also*, Press Release, Better Markets, *GAO Reports that the Losses from the Financial Crisis "Could Exceed \$13 Trillion"*, (February 14, 2013), <http://bit.ly/1M36SI6>.

⁶ *The Cost of the Financial Crisis*, BETTERMARKETS (Feb. 22, 2017) <https://bettermarkets.com/newsroom/20-trillion-cost-financial-crisis-3>

⁷ Stephen Gandel, *Is Proprietary Trading Too Wild for Wall Street?* TIME (Feb. 5, 2010) <http://www.time.com/time/business/article/0,8599,1960565,00.html#ixzz1kuiaucUK>

⁸ *The Financial Crisis Inquiry Report*, FINANCIAL CRISIS INQUIRY COMMISSION, (January 2011) [fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf](http://static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

⁹ Sen. Jeff Merkley, *Steer Clear of Diluting Volcker Rule*, FINANCIAL TIMES (June 25, 2018) <https://www.ft.com/content/019da75e-7867-11e8-af48-190d103e32a4>

¹⁰ *Reducing pro-cyclicality arising from the bank capital framework* JOINT FSF-BCBS WORKING GROUP ON BANK CAPITAL ISSUES (2009), http://www.fsb.org/wp-content/uploads/r_0904f.pdf?page_moved=1

Beyond fueling a crisis, proprietary trading drains the economy even in placid times. Observes Prof. Thomas Philippon of New York University, trading has grown in the finance sector, accounting for the growing share of banking in the gross national product. “The finance industry of 1900 was just as able as the finance industry of 2000 to produce bonds and stocks, and it was certainly doing it more cheaply. But the recent levels of trading activities are at least three times larger than at any time in previous history.”¹¹

The Volcker Rule responds to the lessons learned during the crisis by addressing risks associated with combining commercial banking and investment banking. It also addresses inherent conflicts of interest and takes a step towards ensuring banking groups engage only in client-focused products and services and traditional activities such as deposit-taking and loan-making. The rule is based on the simple premise that high-risk betting does not belong in or near institutions with access to the federal “safety net.”

This statute and underlying principle is widely supported, including by a bipartisan group of former Treasury secretaries, the Independent Community Bankers of America and dozens of other groups and organizations across of the political spectrum.¹²

Proposed revisions

With this joint rulemaking, the Agencies propose to roll back or eliminate current guardrails put in place by the Volcker Rule that were designed to prohibit proprietary trading. In broadest terms, the Agencies are making a change to invert the burden of proof: instead of requiring banks to prove compliance, Agencies will be required to prove non-compliance.

We are concerned about the structure of this proposed revision because the Agencies may weigh industry comment more heavily where it is buttressed with data that will be far easier for financial firms to provide than citizens. The Agencies provide no reports on Volcker Rule compliance. Consequently, it is difficult for outside observers either to justify the current rubric, or to demonstrate quantitatively how the revisions would alter these opaque results. The Volcker Rule was designed to protect Americans from the recklessness of Wall Street. As such, it should be average citizens from whom the Agencies should most want to hear. Yet this proposal and its questions are essentially designed to be answered largely by the same Wall Street firms whose proprietary trading endangers the financial system.

Market Making

The Volcker Rule provides that the Agencies “may determine” that underwriting and market-making are permissible activities. Under the statute, these exemptions require that the bank or its affiliates demonstrate that its positions are designed not to exceed the reasonably expected near-term demand of clients, customers or counterparties (RENTD). In their proposed changes, the Agencies assert that it is difficult to distinguish market making from propriety trading, and so the new revised Volcker rule includes a rebuttable presumption that a banking entity meets the RENTD requirement if the banking entity establishes and enforces internal risk limits on its underwriting and market-making positions. The

¹¹ Thomas Philippon, *Finance v. Wal-Mart: Why are Financial Services so Expensive*, RUSSELL SAGE ORGANIZATION (website viewed September 5, 2017) https://www.russellsage.org/sites/all/files/Rethinking-Finance/Philippon_v3.pdf

¹² *Letter to Treasury Secretary Steven Mnuchin*, SENS. SHERROD BROWN, JEFF MERKLEY (Sept. 7, 2017)

Agencies further permit firms to change those risk limits based on changing customer demand. (Risk limits will be subject to supervisory review and oversight.)

The proposed rule is problematic because instead of requiring the bank to prove compliance, the Agencies presume compliance. The history of bank misconduct, especially among the larger institutions, should cause the Agencies to maintain a precautionary principle, where banks must justify trading, rather than be inherently justified. According to the Systemic Risk Council, the new proposals “amount to giving more discretion to the management of banking groups to determine what are “market making” ... services provided to clients. In a world in which firms travel as a herd... it is hardly prudent to let the integrity of the policy rest on the reliability of management’s discretionary judgement.”¹³ The Systemic Risk Council is composed of more than two dozen experts, including Paul Volcker; Sheila Bair, former chair of the FDIC; Paul Tucker, former Deputy Governor of the Bank of England; Jean-Claude Trichet, former President of the European Central Bank; Brooksley Born, former chair of the Commodity Futures Trading Commission, Adair Turner, former chair of the UK Financial Services Authority, and others. These views of these veterans of financial oversight should be accorded careful consideration.

Further, reliance on internal risk management tools can facilitate evasion. Banks may develop internal risk limits to exceed the actual reasonable near term demand. Risk limits by themselves do not demonstrate market making. Market making, or matching buyers and sellers, should be nearly riskless. When a bank’s customers include both buyers and sellers of a particular asset, then matching them should require little exposure. By simply assuming that trading meets the market making exemption if it falls within risk limits set by the bank, the Agencies essentially permit what may be proprietary trading. As the SEC’s economic analysis aptly notes, “As a result, under the proposed amendments, some entities may be able to maintain positions that are larger than RENTD and, thus, increase their risk-taking. This type of activity could increase moral hazard” and reduce compliance with the intent of the Volcker Rule.¹⁴

Further still, the Agencies propose to relax compliance justification for trading. Section 619 defines proprietary trading as a bank engaging as a principle for the “trading account” of the banking entity. The Volcker Rule currently includes a three-prong definition of trading account. The first two prongs are based on trading activity that is subject to the market risk capital rule and to trading activity conducted by a registered dealer. The Federal Reserve’s Market Risk Capital Rule sets out the capital requirements for banks with substantial trading activity, generally where this exceeds \$1 billion or 10 percent of the assets of the holding company.¹⁵ The third is an intent-based prong relating to trading for short-term profit and includes a rebuttable presumption that the purchase and sale of a financial instrument within 60 days constitutes proprietary trading. [There is no presumption that holding an instrument for longer than 60 days (or any other minimum period) does not constitute proprietary trading.]

The Proposed Rule eliminates the 60-day presumption and replaces the intent-based test with an accounting-based test that looks to whether the account is used to trade financial instruments whose value is recorded at fair value on a recurring basis under applicable accounting standards. (Fair value is a current estimate of an asset were it to be traded presently, and is commonly referred to as “mark-to-market.”) We support the addition of fair value accounting as a marker for proprietary trading. This will

¹³ *Comments on the eSLR and Volcker Rule*, SYSTEMIC RISK COUNCIL (August 8, 2018) <https://4atmuz3ab8k0glu2m35oem99-wpengine.netdna-ssl.com/wp-content/uploads/2018/08/SRC-Comment-Letter-on-eSLR-and-Volcker-Rule-Aug-8-2018.pdf>

¹⁴ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL REGISTER (July 17, 2018) <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-13502.pdf>

¹⁵ *Regulation H*, FEDERAL RESERVE BOARD (website visited June 28, 2018) https://www.ffiec.gov/bsa_aml_infobase/documents/new_6_2006/FRB_BSA_Reg%2006.pdf

capture many of the financial instruments that are used for prohibited activity. We note that an industry trade association, namely the Bank Policy Institute, objects to this change regarding fair value accounting.¹⁶ The Bank Policy Institute is the new name of a group that resulted from the merger of the Clearing House Association and the Financial Services Roundtable. It is composed of large and regional banks. They assert that this would limit trading of certain securities such as investment grade corporate bonds and asset-backed securities. We view this objection as unwarranted. Financial institutions should not be a backstop for trading in all financial instruments; other firms can certainly provide such services.

Where there is no active market, the Agencies declare that firms may use models to assign a value. We are concerned with this permission as it may invite firms to assign values convenient for proprietary trading. The Agencies need not extend the financial safety net for transactions in illiquid instruments by allowing federally insured banks to promote a market where the market has declared these instruments questionable. The construction of complex derivatives, which are likely the common instrument that would be involved in inactive markets, figure at the core of bank dangers. Banks should be encouraged to operate in straight-forward activity.

Further troubling, the revision would establish an optional rebuttable presumption of compliance with the Volcker Rule for trading desks that are subject only to the accounting prong (i.e., where the desks are not part of a registered dealer and where the positions are not subject to the market risk capital rule), based on certain conditions, notably, a \$25 million limit on the absolute value of the daily gain and loss figures for the preceding 90-calendar-day period measured at the trading desk level.¹⁷ [A loss on one day of \$1 million and a gain on the next day of \$1 million would yield an absolute value of \$2 million for the two days.] Within this limit, the trading desk is presumed not to be engaged in proprietary trading.

We are concerned with this \$25 million absolute value metric. First, this invites proprietary trading within these boundaries. Rather than require traders to justify activity, this \$25 million figure essentially affords immunity.

Second, we are concerned that firms may attempt to game this metric—for example, they could divide one trading desk into two. If the Agencies retain this metric, they should refine the definition of a trading desk based on class of securities, so that any group of traders engaged in that class would be limited to the \$25 million cap. The SEC reports that the larger market participants maintain as many as 95 trading desks.¹⁸ In aggregate, these trading desks could record aggregate trading gains and losses of \$2.4 billion each quarter, or nearly \$10 billion during a year. Ideally, genuine market making should mean a net gain/loss approximating zero dollars. If a net results trends towards an annual loss of \$10 billion, this can pose a risk to the bank and erode its capital buffer. We believe in addition to the \$25 million absolute value cap, the Agencies should also set an aggregate absolute value cap across all trading desks. We

¹⁶ Lalita Cloze, *Banks Say No Thanks to Volcker Rule Changes*, WALL STREET JOURNAL (Aug. 15, 2018) <https://www.wsj.com/articles/banks-say-no-thanks-to-volcker-rule-changes-1534353932>

¹⁷ The Agencies explain: If the sum of the absolute values of the daily net gain and loss figures for the preceding 90-calendar-day period does not exceed \$25 million, the activities of the trading desk would be presumed to be in compliance with the prohibition on proprietary trading, and the banking entity would have no obligation to demonstrate that such trading desk's activity complies with the rule on an ongoing basis. —*Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL RESERVE BOARD (May 2018) <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180530a1.pdf>

¹⁸ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, SECURITIES AND EXCHANGE COMMISSION (June 11, 2018) <https://www.sec.gov/rules/proposed/2018/bhca-3.pdf>

believe this cap should be less than \$2 billion quarterly. Such a threshold would remove incentives for banks to expand the number of trading desks and motivate individual trading desks to minimize their individual impact on the overall absolute value cap.¹⁹

The Agencies observe that financial firms occasionally purchase or sell a financial instrument in error. To correct the error, the firm may need to execute a second trade. The Agencies propose to exclude such “error” trades and successive trades from review as proprietary trading. As with essentially all other proposed revisions, the Agencies do not describe the volume of such error activity. We believe it may be substantial. For example, in 1995, Barings Bank trader Nick Leeson collapsed the bank with what the bank accounted for as “error” trades. His losses exceeding \$1 billion were contained in what the bank called “Error Account 88888.”²⁰ We object to blanket immunity from Volcker Rule restrictions for error trades. We ask that the Agencies require that any profit from error trades be forfeited to the US Treasury. This would remove any incentive to use “error” trades for proprietary trading.

Hedging

Under the current rule, firms must demonstrate that a position taken as a hedge is designed to accomplish its institutional mission. A firm must undertake correlation analysis to show that the risk of the hedge offsets the risk of another position. The regulators remove this requirement, and offer a curious explanation. “A banking entity may sometimes develop or modify its hedging activities as the risks it seeks to hedge are occurring, and the banking entity may not have enough time to undertake a complete correlation analysis before it needs to put the hedging transaction in place to fully hedge against the risks as they arise.”²¹ This suggests that banks undertake hedges based not on correlation analysis, but some other reasoning.

Correlation between assets is and should be a common exercise among traders. When a trader procures one asset, the appropriate hedge should already be understood based on existing correlation analysis. It is simply not common practice for a trader to take a position in one asset, and then devise a hedge. By removing the correlation analysis requirement, the agencies will invite proprietary trading. Instead of removing the correlation analysis requirement, the agencies should require disclosure of a catalogue of previously analyzed hedges for each asset that is traded.

In a dynamic market, correlation must also be updated. What may be a hedge today could be a proprietary trade tomorrow, based on market conditions. This becomes clear from correlation analysis. Removing the analysis requirement will allow traders to anticipate such changes, turning their supposed hedging efforts into proprietary trades. We agree generally with the SEC’s economic analysis that banking entities may be able to engage in “speculative proprietary trading” by relying on the risk-mitigating hedging

¹⁹ The Value at Risk levels of major banks are measured in the dozens of millions of dollars, so such an absolute value cap can serve as an important limit on risk-taking. See Christopher Whittall, *Value at Risk Model Masked JP Morgan/s \$2 billion loss*, REUTERS, (May 11, 2012) <https://www.reuters.com/article/jpmorgan-var/value-at-risk-model-masked-jp-morgan-2-bln-loss-idUSL1E8GBKS920120511>

²⁰ Jason Rodrigues, *Barings Collapse at 20*, THE GUARDIAN (Feb. 24, 2015) <https://www.theguardian.com/business/from-the-archive-blog/2015/feb/24/nick-leeson-barings-bank-1995-20-archive>

²¹ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL RESERVE (May 2018) <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180530a1.pdf>

exemption. As the SEC notes, this can increase “moral hazard and conflicts of interest between banking entities and their customers.”²²

Liquidity Management

The Volcker Rule permits banking entities to purchase and sell securities for liquidity management purposes, subject to certain requirements. Generally, liquidity management serves to help financial firms to retain sufficient liquid resources to meet short-term operational needs.

The Agencies propose to expand the liquidity management exemption to permit the use of deliverable foreign exchange forwards and swaps, and physically-settled cross-currency swaps for liquidity management purposes. The Agencies provide no rationale for this expansion. We oppose this expansion as it will invite greater speculation in such derivatives. The SEC notes, added “flexibility” in the types of securities for liquidity management may lead to “potentially very large exposures,” which can increase risk taking and frustrate regulatory oversight.²³ Complicated devices such as those contemplated in this expansion more often serve to drain capital from commercial firms. Cash settled swaps (including non-deliverable foreign exchange forwards) would not be covered by the liquidity management exemption, and we endorse this continued exclusion.

Super 23A Prohibitions

The so-called Super 23A provisions of the Volcker Rule generally apply the restrictions of Section 23A of the Federal Reserve Act on “covered transactions” between a member bank and its affiliates. Generally, this means that a banking entity and its affiliates may not lend money to a hedge fund or other investment vehicle that the banking entity sponsors or advises. Nor may the banking entity purchase assets from such covered fund or engage in other covered transactions with such fund. The Agencies ask whether these restrictions should be relaxed. We believe that they should not be relaxed. We believe that the Agencies should bar hedge funds (one of the covered funds) altogether, pursuant to the statute, discussed below. (The statute only allows the Agencies to allow *de minimus* investment, but the Agencies could bar them altogether.) Allowing for bank loans to a hedge fund extends the taxpayer subsidy to this arena of speculation, which is best conducted separate from the bank.

Metrics Reporting Requirements

The Agencies have proposed several changes to metrics reporting requirements in the Proposed Rule. Reporting and record keeping requirements are tailored to the banking entity’s size and level of trading activity, with some metrics completely eliminated and some new metrics added. Timelines for reporting metrics are extended for certain firms. The Agencies have also requested comment on whether metrics reporting should be centralized into a single collection point.

Proposed changes to metrics reporting requirements include adding qualitative information schedules, removing certain metrics, (such as inventory aging for derivatives and stressed value-at-risk for risk mitigating hedging desks), and switching reporting of metrics to a standard XML file format. The Agencies would collect descriptive information for each trading desk in order to better evaluate

²² *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL REGISTER (July 17, 2018) <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-13502.pdf>

²³ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading*, FEDERAL REGISTER (July 17, 2018) <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-13502.pdf>

quantitative metrics. Seven categories of qualitative data are proposed: trading desk name and trading desk identifier, type of covered trading activity, trading desk description, types of financial instruments and other products, legal entities the trading desk uses, legal entity type identification, trading day indicator, and currency reported/currency conversion rate. The Proposed Rule would also double the allowable metrics reporting time, from 10 to 20 days, for the largest firms (those with \$50 billion or more in trading assets and liabilities). We are unaware of any metrics reporting, as the Agencies have elected to disclose no results. Therefore, it is impossible to weigh the impact of these changes. In the absence of such data, we cannot support these tailored metrics reporting proposals.

Economic Analysis

Generally, economic analysis remains one of the glaring deficiencies in this proposal. In proposing these revisions, the Agencies should have engaged in robust economic analysis. The Volcker Rule addresses one of the major activities on Wall Street, and its implementation process was lengthy, and full of engagement on the part of stakeholders. However, for this revision of the rule, the Agencies cite almost no analysis. On 30 separate pages, the Agencies simply cite “experience.”²⁴

Rather than review data, the Securities and Exchange Commission lists areas it has declined to assess, including “reasonable estimates for the economic effects of the proposed amendments.” Specifically, the SEC also notes it does not assess the trading that takes place within a firm’s “reasonably expected near term demand;” how internally-set risk limits capture expected customer demand; how banks correlation analysis truly reflect whether a hedge serves its purpose; or even the volume of loans and the level of risk reduction.²⁵ In other words, while the SEC proposes a major revision, they lack the data to describe how the Volcker Rule works now, or would work under these revisions. SEC Commissioner Jackson calls his agency’s economic analysis “reed thin.” He observed, “A moment like this, when banking regulators around the world are watching as we consider major rule changes, demands our best work. The economic analysis supporting today’s proposal does not meet that standard.” He notes that the analysis deals more with the cost of attorney fees on compliance with the impact of the existing rule and forecast about its revisions.²⁶

To date, the principle criticism from industry regarding the Volcker Rule involves liquidity. Financial institutions claim the Volcker Rule should be diluted because of harm to liquidity. Liquidity refers to the ability of buyers and sellers to transact with minimal change in price. That liquidity should trump financial stability as a key goal is untenable, even were it true that the Volcker Rule has harmed this metric. Liquidity should not be a key or even major metric. There are times when liquidity actually signals a bubble, as frothy trading can be irrational. The so-called dot-com bubble, when internet stocks reached levels unsupported by fundamentals such as revenue or profit, is one such example. More recently, liquidity in the housing market, including traffic in securitizations, also presaged the financial crash of 2008.

²⁴ Greg Gelzinis, *Regulators’ dangerous plan to carve up the Volcker Rule*, AMERICAN BANKER (June 16, 2018) <https://www.americanbanker.com/opinion/regulators-dangerous-plan-to-carve-up-the-volcker-rule?brief=00000160-700b-dbf5-a562-788b36110000>

²⁵ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, SECURITIES AND EXCHANGE COMMISSION (June 11, 2018) <https://www.sec.gov/rules/proposed/2018/bhca-3.pdf>

²⁶ Comm. Robert Jackson, *Proposed Amendments to the Volcker Rule*, SECURITIES AND EXCHANGE COMMISSION (June 5, 2018) https://www.sec.gov/news/public-statement/jackson-statement-proposed-amendments-volcker-rule#_ftn5

But the fact is that liquidity has not been harmed by the current incarnation of the Volcker Rule. In the most thorough review of this subject, in a report commissioned by an act of Congress, the Securities and Exchange Commission has assessed the impact of the Volcker Rule on market liquidity. It has reviewed existing studies and augmented these with its own research, availing itself with information that only a government agency can obtain. Its conclusion: Market liquidity remains robust. For example, “In corporate bond markets, trading activity and average transaction costs have generally improved or remained flat. More corporate bond issues traded after regulatory changes than in any prior sample period.”²⁷ The Agencies do not address the issue of liquidity. In other words, the Agencies do not proffer any tangible economic reason for diluting the Volcker Rule. We are left with the suspicion that the motivation for this revision is simply to relax the restrictions on proprietary trading, a violation of the intent of this law.

Improving the Volcker Rule

Even as we object to many of the core proposed revisions to the Volcker Rule, we do believe significant changes are needed to realize the statutory promise of the Volcker Rule. The broad public policy merits of this statute deserve robust implementation by the Agencies. To honor this policy, we believe that the Volcker Rule should be improved. It should be made transparent, so that the public can be assured that proprietary trading restrictions are upheld. Penalties for violations should be increased. It should also be enforced through attention to trader compensation. It should be strengthened through a ban on market making altogether, as is provided in the statute.

Transparency

We believe that transparency is central to bank safety and soundness generally, and to the Volcker Rule in particular. With transparency, the market can serve as police. The Volcker Rule is a central element of Wall Street reform, yet the regulators have established no vehicle for reporting on progress. The Agencies report the results of stress tests and living wills. But there is no such report on the Volcker Rule. As a result, it is difficult to ascertain whether the rule is enforced with vigor. The evidence that firms have reduced trading is mixed. On one side of the ledger, the Comptroller of the Currency reports no significant decrease in total trading revenue as a percentage of the gross revenue at the four most active trading banks. It also reports an increase in commodity and equity derivative contracts.²⁸ As for specific firms, JP Morgan, has only deployed \$894 billion to loan-making out of its \$1,375 billion in deposits. The balance has been allocated to trading.²⁹ Some trading has been costly. Goldman lost \$100 million in what the Wall Street Journal called a “wrong way bet” on natural gas prices.³⁰

²⁷ *Report to Congress: Access to Capital and Market Liquidity*, DIVISION OF ECONOMIC AND RISK ANALYSIS, SECURITIES AND EXCHANGE COMMISSION (August 2017) <https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-dera-2017.pdf>

²⁸ *Quarterly Report on Bank Trading and Derivatives Activities*, COMPTROLLER OF THE CURRENCY, (First Quarter, 2017) <https://www.occ.gov/topics/capital-markets/financial-markets/derivatives/dq117.pdf>

²⁹ JP Morgan 10-k, SECURITIES AND EXCHANGE COMMISSION (2016) <https://www.sec.gov/Archives/edgar/data/19617/000001961717000314/corp10k2016.htm#s0ADE49B355ED5DA4852BAB618E8A2865>

³⁰ Liz Hoffman, *Wrong Way Bet Fueled Goldman's Second Quarter Swoon*, WALL STREET JOURNAL, (August 18, 2017) <https://www.wsj.com/articles/wrong-way-gas-bet-fueled-goldmans-second-quarter-swoon-1503048600>

On the other side of the ledger, there is some evidence that trading may be subsiding. The Comptroller of the Currency reports a steady decline in the “value at risk” levels of the major banks, in credit derivative contracts, and in so-called level 3 trading assets since the financial crisis. Level 3 assets are those without market prices and where the bank itself assigns a price.³¹ Value at risk is a measure of the total loss a firm could suffer in an adverse scenario. JP Morgan has forecast a decline in trading revenue.³² Goldman reported that it would reduce reliance on trading revenue in favor of more aggressive loan-making.³³

Beyond these broad results, we know little about the Volcker rule. To address this lack of clarity, we recommend that regulators publish a number of items to demonstrate the enforcement of the Volcker Rule. We recommend that regulators publish: enforcement actions; data for each individual bank trading desk, (with a delay); details of private equity and hedge fund ownership and activity. With a delay, none of this data would compromise proprietary information. Traders who leave one bank for another are paid a “gardening leave” where they do not work for either firm. This period can last as little as four weeks, because the trading positions and strategies are no longer revealing to the new firm at this point. Consequently, publication of firm data after four months or longer would not reveal sensitive information. Publication on quarterly basis, as the Comptroller now does with derivatives trading aggregates, would allow the public to understand better if the Volcker Rule is truly operational. If a trader, who is best positioned and motivated to exploit inside information of a rival firm, can be trusted with four-week old data, then surely the public can be trusted with four month old information.

Sens. Jeff Merkley (D-Ore.), Sherrod Brown (D-Ohio), and Elizabeth Warren (D-Mass.) also call for expanded transparency. “The agencies have had ample time to devise ways to safeguard confidential information; the time has come to effectuate these changes, particularly given the public’s need to understand the impact of the Volcker Rule in light of the agencies’ proposed changes.” They note that accountability is challenged by lack of transparency. Further, publicizing data and metrics serves the public interest. “Bank counterparties and customers would benefit from greater transparency regarding how the ban on proprietary trading and fund investments is being enforced. Customers could have greater confidence that dealers were facilitating market-making rather than betting against them, and emergent firms could better understand opportunities to compete against established dealer banks. Finally, banks themselves would also have a better, more reliable understanding of what trading and fund investment activities are permitted in practice.”³⁴

Compensation

Compensation serves at the core of management of bank risk-taking in general, and the Volcker Rule in particular. Compensation structures encourage or bridle behavior. The proposed revision retains the current rule language, namely, that “the compensation arrangements are designed not to reward or

³¹ *Quarterly Report on Bank Trading and Derivatives Activities*, COMPTROLLER OF THE CURRENCY, (First Quarter, 2017) <https://www.occ.gov/topics/capital-markets/financial-markets/derivatives/dq117.pdf>

³² Fred Imbert, *JPMorgan CEO Jamie Dimon says bitcoin is a “fraud” that will eventually blow up*, CNBC (September 12, 2017) <https://www.cnbc.com/2017/09/12/jpmorgan-ceo-jamie-dimon-raises-flag-on-trading-revenue-sees-20-percent-fall-for-the-third-quarter.html>

³³ Dakin Campbell, *Goldman’s Trading Turnaround Takes a Back Seat to Lending*, BLOOMBERG (Sept. 12, 2017) <https://www.bloomberg.com/news/articles/2017-09-12/goldman-sees-2-5-billion-earnings-opportunities-through-2020>

³⁴ *Letter to regulators*, Sens. Jeff Merkley (D-Ore.), Sherrod Brown (D-Ohio), and Elizabeth Warren (D-Mass.), OFFICE OF SEN. JEFF MERKLEY, (July 30, 2018) Sens. Jeff Merkley (D-Ore.), Sherrod Brown (D-Ohio), and Elizabeth Warren (D-Mass.)

incentivize prohibited proprietary trading.” As in our comment on the original rule, we find this instruction weak. We believe at a minimum that the language should state that these compensation arrangements “must not reward or incentivize prohibited proprietary trading.” As the Volcker Rule bans proprietary trading, traders and the firms should not be allowed to profit from it.

Goldman Sachs trader Tom Malafronte reportedly earned \$100 million during a six month period in the beginning of 2016 on bond trades. Asks market observer Matt Levine, “How could a trader make \$100 million by buying bonds and then, later, selling them for a profit? Wasn't the Volcker Rule supposed to prohibit proprietary bond trading by banks?”³⁵ In this case, Malafronte purchased low-rated “junk” corporate bonds.³⁶ During some days, Malafronte’s activity accounted for “more than a third of all trading volume in some bonds,” according to one media account. He resold some bonds within a day, and in other cases, in a matter of weeks.³⁷

Goldman Sachs did not comment in these news articles, and regulators have not taken any publicized action. But the question remains as to whether Malafronte’s compensation derived from profits from these sales, and not the commissions from servicing these transactions. Stanford University professor Anat Admati noted, “It’s implausible to make such outsized profits on what is essentially customer accommodation.”³⁸

Indeed, Section 956 of Dodd-Frank provides that bank CEOs may not pay “excessive” compensation. It is difficult to conjure a circumstance where \$100 million is not excessive. We note that, even as the Agencies turn to the Volcker Rule for a second time, the Agencies have failed to implement Section 956 of Dodd-Frank. This is the basic banker pay reform. Along with the Volcker Rule, Section 956 is one of the foundational reforms that Congress mandated to address the collapse of Wall Street. Unlike the vast majority of the 400 rules from Dodd-Frank, Congress set a deadline for implementation of Section 956: May, 2011. Yet seven years later, and ten years since destructive compensation incentives led bankers to engage in reckless, even fraudulent conduct, this rule remains dormant. The Agencies do not even list Section 956 as an item on their respective agendas. In his dissent on revising the Volcker Rule, SEC Commissioner Robert Jackson highlighted the Agencies’ oblivion to the role of banker pay: “There is a simple way to prevent people from doing something: don’t pay them to do it. If we want to make sure bankers don’t gamble with taxpayer money, we should make sure *they’re not getting paid to gamble with taxpayer money*. Rolling back the Volcker Rule while failing to address pay practices that allow bankers to profit from proprietary trading puts American investors, taxpayers, and markets at risk. That is a risk that I cannot accept.”³⁹

For the Volcker rule, the Agencies should limit trading compensation to well-known methods used for commissions and fees. The Agencies should tie pay to risk. One method to effectively “weight” revenue with respect to risk could be setting a maximum compensation when the trader’s VaR is 0, with a sliding

³⁵ Matt Levine, *Bond Trades and Merger Codenames*, BLOOMBERG (October 19, 2016) <https://www.bloomberg.com/view/articles/2016-10-19/bond-trades-and-merger-codenames>

³⁶ Justin Baer, *How One Goldman Sachs Trader made more than \$100 million*, WALL STREET JOURNAL, (Oct. 19, 2016) <https://www.wsj.com/articles/how-one-goldman-sachs-trader-made-more-than-100-million-1476869402>

³⁷ Justin Baer, *How One Goldman Sachs Trader made more than \$100 million*, WALL STREET JOURNAL, (Oct. 19, 2016) <https://www.wsj.com/articles/how-one-goldman-sachs-trader-made-more-than-100-million-1476869402>

³⁸ Francine McKenna, *How a Goldman Sachs Trader can make \$100 Million in the Volcker Rule Era*, MARKETWATCH (Oct. 20, 2016) <https://www.marketwatch.com/story/how-a-goldman-sachs-trader-can-make-100-million-in-the-volcker-rule-era-2016-10-20>

³⁹ Comm. Robert Jackson, *Proposed Amendments to the Volcker Rule*, SECURITIES AND EXCHANGE COMMISSION (June 5, 2018) https://www.sec.gov/news/public-statement/jackson-statement-proposed-amendments-volcker-rule#_ftn5

scale that decreases pay as VaR increases. The customer service component is measurable in many ways, including taking qualitative surveys of clientele in the manner similar to the exhaustive surveys by independent consultants that are commissioned regularly by banking entities.

Penalties

As with the current rule, the Agencies have failed to detail automatic penalties and fines for prohibited activities. In fact, the word “penalty” does not exist in the revised rule. The Bank Holding Company Act (Section 8) provides for penalties generally, but the Agencies should describe specific penalties for infractions of the Volcker Rule. Failure to define these penalties signals that the Agencies are not serious about compliance.

Major banks engage in trillions of dollars’ worth of trading over the course of a year. Given the widespread misconduct identified at these banks in areas such as securitization fraud, false account creation, and money laundering, it is reasonable to imagine numerous infractions of the Volcker Rule. Yet the Agencies have identified only one such infraction, namely, at Deutsche Bank.⁴⁰ Here, circumstances regarding the infraction remains unclear. In this case, the Federal Reserve found “Significant weaknesses existed in Deutsche Bank’s demonstrable analyses showing that its proprietary trading is not to exceed the reasonably expected near term demands of clients, customers, or counterparties, required for permitted market-making activities, and Deutsche Bank did not subject trading desks’ RENTD methodologies to sufficient review or challenge by internal control group.”⁴¹ The Federal Reserve fined Deutsche Bank \$19.7 million for the infraction. While we appreciate this evidence of enforcement, we remain baffled by a number of issues. What, precisely, were the stated weaknesses? Did Deutsche make a substantial profit on certain trading assets? What review of a trading desk is required? How was the penalty determined? Did this cover ill-gotten gains? Did the penalty

Section 619 provides that the Agencies may “further restrict” a firm’s investment activities. This authority is stated as a standalone injunction. We urge the Agencies to use this authority to establish strong penalties. For example, all capital gains should be forfeited to the U.S. Treasury. This simple disgorgement requirement would eliminate much of the complexity of the current Volcker Rule. If a bank cannot retain gains from an investment risk, it would not take that risk. Market-making would truly involve matching existing buyers with existing sellers.

Glass Steagall

Finally, as noted above, we believe the statute directs a more restrictive result for proprietary trading than this proposed revision provides. The Volcker Rule directs the Agencies to prohibit proprietary trading. It “may determine” that certain activities such as market making are permissible. But it must only make this determination under certain conditions. If it unable to ascertain that those conditions are met, as is evident in this proposed revision, then it may bar market-making.

The Agencies should also bar investment in hedge funds. This is one of the blatant arenas where banks have engaged in proprietary trading. Hedge funds are investment vehicles that pool capital from investors and are augmented with borrowed money. Unlike mutual funds, hedge fund investments can be complicated and are usually much riskier. For the most part, the Volcker Rule called for banks to shed these funds. The statute, however, allows the Agencies to permit a bank to own as much as 3 percent of

⁴⁰ *Federal Reserve Announces Two Enforcement Actions*, FEDERAL RESERVE (April 20, 2017) <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20170420a.htm>

⁴¹ *Consent Order, Deutsche Bank*, FEDERAL RESERVE BOARD (April 20, 2017) <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20170420a2.pdf>

what is termed a “covered” fund, provided they do not count equity in these funds toward meeting capital requirements. Besides the 3 percent limit, the statute also granted banks a lengthy time to exit their hedge fund investments and that timeline has been extended further. In December 2014, regulators extended the deadline two years, until 2022 to exit this gambling arena. Volcker himself resorted to thinly veiled sarcasm following announcement of this reprieve: “It is striking that the world’s leading investment bankers, noted for their cleverness and agility in advising clients on how to restructure companies and even industries however complicated, apparently can’t manage the orderly reorganization of their own activities in more than five years.”⁴² We believe the Agencies should use their statutory authority and bar investments altogether in these “covered” funds.

Instead, this proposed rule surrenders to this effort, and simply presumes the trading will be permissible unless the agency can prove otherwise. Similarly, the statute declares that banks may not own hedge funds. Instead of banning hedge fund investment, however, both the current and the proposed rule provides wide latitude.

We believe the Agencies should bar market making and hedge fund investment altogether. This clean solution would take the industry a long way towards restoring the Glass Steagall separation of commercial and investment banking. Congress responded to the last major Wall Street crash in 1929 with the National Banking Act, on June 16, 1933. Known as “Glass-Steagall” in reference to U.S. Sen. Carter Glass (D-Va.) and U.S. Rep. Henry Steagall (D-Ala.), this act established a federal guarantee for the loans given to banks from depositors. But Congress also decided that banks should constrain their risk-taking to loan-making to customers such as businesses and home buyers. Congress deemed such activities to be socially useful. The 1933 act banned banks with FDIC-insured deposits from engaging in riskier, socially dubious activities associated with the financial crash of 1929. The Independent Community Bankers of America (ICBA), consisting of more than 5,000 member banks, articulated the policy rationale behind this division in 2013: “Banks are accorded access to federal deposit insurance and liquidity facilities because they serve a public purpose: facilitating economic growth by intermediating between savers and borrowers, *i.e.*, taking deposits and making loans, and by maintaining liquidity in the economy throughout the economic cycle. These activities constitute the fundamental business of banking.”⁴³

The statutory text of Section 619, buttressed by its legislative history demonstrate that the Volcker Rule was intended to restructure the banking system in significant ways in order to address the problem of systemic risk. Consider the July 15, 2010 floor colloquy between Sens Jeff Merkley (D-Ore) and Carl Levin (D-Mich). They compare Glass-Steagall and the Volcker Rule. They explicitly state that the law is intended to both restore and update a barrier between commercial and investment banks. The statute “embraces the spirit of the Glass-Steagall separation of ‘commercial’ from ‘investment’ banking by restoring a protective barrier around our critical financial infrastructure,” they explain.⁴⁴

We believe strict enforcement of Section 619 will yield greater competition. Currently, there are 3,658 registered broker dealers who are unaffiliated with a bank. There are only 262 broker dealers that are

⁴² Peter Eavis, *Fed’s Delay of Parts of Volcker Rule Is Another Victory for Banks*, NEW YORK TIMES (Dec. 19, 2014), <http://nyti.ms/23ezrrr>.

⁴³ Comment from Independent Community Bankers of America to Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Commodities Futures Trading Commission, and Securities and Exchange Commission re: The Volcker Rule, (Feb. 13, 2012) . http://www.federalreserve.gov/SECRC/2012/March/20120305/R-1432/R-1432_021312_104966_451638070183_1.pdf

⁴⁴ Congressional Record, United States Congress, NEW YORK TIMES (July 15, 2010) <http://graphics8.nytimes.com/packages/pdf/business/Economix-Merkley-Levin-Detailed.pdf>

affiliated with banks, of which 138 are affiliated with major institutions. These 3,658 independent broker dealers, however, only account for less than 25 percent of trading assets, while the 138 associated with the major banks account for 75 percent.⁴⁵ These thousands of broker dealers stand ready to fill the gap if banks are forced to exit market making. With the lion's share of trading assets spread over a larger number of competitors, investors would be better served.

The transition would be even easier for hedge funds and other covered funds, such as real estate funds, venture capital funds, and other private funds. Of all 10,329 hedge funds, only 947 are associated with banks. Of all 13,588 private equity funds, 1,282 are associated with banks.⁴⁶ Already, sophisticated investors are able to find such investment opportunities without the need of a bank.

Beyond subsidizing economically dubious speculation, beyond the risks threatened by speculation, we believe speculation corrupts the culture of patient loan making that once prevailed at major banks. Banks that once employed only risk-wary loan makers now house traders who bring a different temperament. Bankers transformed from hate-to-lose officers focused on reducing risk into love-to-win speculators, said derivatives industry observer Nicholas Dunbar.⁴⁷ John Reed, former Citigroup CEO, affirms this culture shock, which he describes as "very serious." When investment and traditional bankers mix:

It makes the entire finance industry more fragile ... As is now clear, traditional banking attracts one kind of talent, which is entirely different from the kinds drawn towards investment banking and trading. Traditional bankers tend to be extroverts, sociable people who are focused on longer term relationships. They are, in many important respects, risk averse. Investment bankers and their traders are more short-termist. They are comfortable with, and many even seek out, risk and are more focused on immediate reward. In addition, investment banking organizations tend to organize and focus on products rather than customers. This creates fundamental differences in values.⁴⁸

International Monetary Fund Managing Director Christine Lagarde affirmed, "The industry still prizes short-term profit over long-term prudence, today's bonus over tomorrow's relationship."⁴⁹

Misguided Deregulation

⁴⁵ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, SECURITIES AND EXCHANGE COMMISSION (June 11, 2018) <https://www.sec.gov/rules/proposed/2018/bhca-3.pdf>

⁴⁶ *Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, SECURITIES AND EXCHANGE COMMISSION (June 11, 2018) <https://www.sec.gov/rules/proposed/2018/bhca-3.pdf>

⁴⁷ Nicholas Dunbar, *The Devil's Derivatives: The Untold Story of the Slick Traders and Hapless Regulators Who Almost Blew Up Wall Street... and Are Ready to Do It Again* HARVARD BUSINESS REVIEW PRESS (2011), <http://bit.ly/1Ji4BaU>.

⁴⁸ John Reed, *We Were Wrong about Universal Banking*, FINANCIAL TIMES (November 2015), <http://on.ft.com/1PF9w24>.

⁴⁹ Speech by Christine Lagarde, Managing Director, International Monetary Fund, *Economic Inclusion and Financial Integrity- An Address to the Conference on Inclusive Capitalism* (May 27, 2014), <http://bit.ly/1hd5S4Q>.

Whether or not regulators are enforcing the Volcker Rule forcefully, banks of all sizes are thriving. The banking industry's annual profits are reaching record highs.⁵⁰ These profits continue to grow.⁵¹

Surely, a time of financial profit and general economic growth is not time to reverse key reforms, and specifically not a time to dilute the Volcker Rule.

Key regulators warn against relaxing the reforms that have proven key to economy recovery and even to bank prosperity. Regulators warn against diluting the Volcker rule. Thomas Hoenig, vice chair of the Federal Deposit Insurance Corp., contends the Volcker Rule is critical and doesn't harm community banks. "I regularly meet with hundreds of community bankers from around the country, and while they voice major concerns about regulatory burden, the Volcker Rule is not one they highlight."⁵² Former Federal Reserve Chair Janet Yellen observed, "The events of the crisis demanded action, needed reforms were implemented, and these reforms have made the system safer."⁵³ Former Federal Reserve Vice Chair Stanley Fischer warns against rolling back regulations. "It took almost 80 years after 1930 to have another financial crisis that could have been of that magnitude." Going "go back to a status quo before the great financial crisis" would be "extremely dangerous and extremely short-sighted."⁵⁴

Conclusion

As stated in the beginning, we believe the effort to dilute the Volcker Rule is dangerously misguided. In a letter to Treasury Secretary Steven Mnuchin, Sens. Sherrod Brown (D-Ohio) and Jeff Merkley (D-Oregon) wrote, "Given the strong evidentiary basis for the Volcker Rule, and the lack of empirical evidence that it is causing any harm to the Main Street economy, we urge you to join us in rejecting this unnecessary, costly, and disruptive re-litigation of the final Volcker Rule."⁵⁵

We agree with these senators and regulators that the Volcker Rule should not be diluted, and in fact that it must be strengthened. We believe results should be made transparent to all, so the public can understand enforcement, and that banks should not gamble with taxpayer-backed deposits, but instead focus on the productive application of these funds to useful enterprise.

We appreciate your attention to our comments.

For questions, please contact Bartlett Naylor at [REDACTED], or [REDACTED].

⁵⁰ Ryan Tracy, *U.S. Banking Industry Annual Profit Hit Record in 2016*, THE WALL STREET JOURNAL, (February 8, 2017), <https://www.wsj.com/articles/u-s-banking-industry-annual-profit-hit-record-in-2016-1488295836>.

⁵¹ Yalman Onaran, *U.S. Mega Banks Are This Close to Breaking Their Profit Record*, BLOOMBERG MARKETS, (July 21, 2017), <https://www.bloomberg.com/news/articles/2017-07-21/bank-profits-near-pre-crisis-peak-in-u-s-despite-all-the-rules>.

⁵² Thomas Hoenig, *Volcker Rule rollback is not the kind of reg relief small banks need*, AMERICAN BANKER (August 24, 2017) <https://www.americanbanker.com/opinion/volcker-rule-rollback-is-not-the-kind-of-reg-relief-small-banks-need>

⁵³ Janet Yellen, *Financial Stability a Decade after the Onset of the Crisis*, FEDERAL RESERVE, (August 25, 2017) <https://www.federalreserve.gov/newsevents/speech/yellen20170825a.htm>

⁵⁴ Karen Gilchrist, *Plans to unwind banking regulation 'very, very dangerous,' says Fed's Fischer*, CNBC (August 17, 2017) <https://www.cnbc.com/2017/08/16/fed-fischer-plans-to-unwind-banking-regulation-very-dangerous.html>

⁵⁵ *Letter to Treasury Secretary Steven Mnuchin*, SENS. SHERROD BROWN, JEFF MERKLEY (Sept. 7, 2017)

Sincerely,
Public Citizen