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**KEEP IT SIMPLE
(AMENDMENTS TO OCTOBER 21, 2011 MINORITY BUSINESS COMMENTS ON
“PROHIBITIONS AND RESTRICTIONS ON PROPRIETARY TRADING AND
CERTAIN INTERESTS IN, AND RELATIONSHIPS WITH, HEDGE FUNDS AND
PRIVATE EQUITY FUNDS”)**

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The Black Economic Council, the Latino Business Chamber of Greater Los Angeles and then National Asian American Coalition filed their initial comments on the Volcker Rule on October 21, 2011 entitled, “Mr. Volcker Would Be Perplexed, If Not Embarrassed.”

The theme of our amended comments has not changed. But, they have been edified and clarified by lengthy personal discussions with Paul Volcker’s chief of staff and senior officials from the Federal Reserve and the FDIC, as well as the comments made by distinguished commentators, such as former FDIC Chairman Sheila Bair, and comments by the banking industry and federal officials’ testimonies before the House Committee on Financial Services on January 18, 2012.

In our initial comments of October 21, 2011, the chairman of the Latino Business Chamber of Greater Los Angeles stated, “It is inappropriate to trivialize the Volcker Rule, the most significant bank enforcement legislation since the New Deal, by producing a document almost a thousand times longer than either the Gettysburg Address or the Ten Commandments.”

This still remains the heart of our comments.

Apparently, the banking industry shares this concern.

In summary, if we cannot secure a Volcker Rule that is simple, noncomplex and of assistance to both the public and the banking industry, we should follow Sheila Bair’s advice of scrapping it and starting anew.¹ But, we believe it can be simple.

The rules could be as simple as the following.

Full Disclosure

Any financial institution subject to the Volcker Rule should be required to provide full and clear disclosure of all actions covered by the Volcker Rule. The burden of demonstrating transparency and full disclosure shall be upon the financial institution covered by the Volcker Rule, rather than the regulators.

¹ See, Fortune Magazine of December 26, 2011, “We Need a New Volcker Rule for Banks.”

² See, Wall Street Journal of December 3, 2011, “Starting Over with Regulation: Why are

CEO Responsibility

The CEOs and the CFOs should be held fully responsible for any violations of the Volcker Rule by any employee above the level of clerical. The penalties for violations must be clear. For example, the CEOs and CFOs of any companies found to have engaged in any substantial violations shall be (a) instantly dismissed, (b) forfeit their last one to three years of aggregate compensation and (c) be deprived of any severance pay or pension benefits.

This is a far more effective rule than making the CEOs and CFOs subject to criminal penalties, given the laxness of our legal system and the apparent weaknesses of the Department of Justice in pursuing criminal violations.

We would also suggest that the civil penalty automatically bar the CEOs and CFOs from reentering any aspect of the industry, broadly defined, for at least five years.

Simplifying the Regulations

To simplify the regulations, and what are clearly legitimate concerns by prominent leaders in the banking industry, such as Jamie Dimon, the burden of demonstrating compliance with the Volcker Rule should be a very heavy burden upon the financial institutions to demonstrate their compliance. This would clearly simplify the regulatory process.

The burden of compliance could be stated for financial institutions subject to the Volcker Rule in the following simple fashion: "The financial institution must demonstrate 'clear and convincing' evidence."

Conflicts of Interests

By high school graduation, 95 percent of Americans understand, at least in the biblical sense, a conflict of interest. There is no evidence that ethics courses or complexity in defining ethics are helpful in this regard. In fact, some experts believe, by the time you have completed kindergarten, your moral base has been significantly determined. Therefore, it might be well to just state that when the regulator contends that there is a conflict of interest, the financial institution must meet the "clear and convincing" evidence standard.

As many have stated, particularly in the banking industry, we need to replace today's micromanaged regulatory system with results-based regulations. That is, simple rules tied to the outcomes they produce.²

² See, Wall Street Journal of December 3, 2011, "Starting Over with Regulation: Why are Government Rules so Complex?" and of December 27, 2012, "Badly Written Bad Rules." Also see, New York Times of January 17, 2012, "Keep It Simple."

Incentive Pay

Most experts and even many bankers acknowledge that incentive pay for those within the financial industry promotes risk taking. To the degree that this is correct, we would suggest a very simple rule. End all incentive pay or limit it to a maximum of ten percent of base salary.

The vast majority of Americans, including our police officers and fire fighters, risk their lives without any potential bonuses or reward.

Even as to the ten percent allowable base pay, we would urge that such bonuses be deferred for at least three years.³

Four thousand years ago, a Hammurabi Code for the blossoming and influential Babylonian culture provided much guidance relating to preventing Wall Street risk taking. The Hammurabi Code states:

“If a builder builds a house for a man and does not make its construction firm, and the house which he has built collapses and causes the death of the owner of the house, that builder shall be put to death.”

This may be a draconian risk management rule for our modern and increasingly complex society and because of its very draconian provisions not be effectively enforceable in a modern democracy. Therefore, we urge the civil penalties set forth above, such as dismissal from the company without compensation.

“Too Big to Fail”

The larger problem within the Volcker Rule may well be “too big to fail” banks. An increasing number of banking experts suggest that a simpler way to provide maximum protection would be to, in effect, make the Volcker Rule unnecessary. That is, no bank would be so big as to have a systemic effect on banking, our economy or the public. We are unclear as to what the maximum size of a financial institution should be so as to maximize effectiveness, efficiency, the public interest and profits.

Perhaps 250 billion dollars should be the maximum for FDIC-insured deposits. If this were the case, it is highly likely that we would have a minimum of twenty banks competing for national and regional leadership. And, if the amount of insured deposits was reduced to a maximum of 100 billion dollars, it is quite possible that within five years, we would have between fifty and a hundred competing banks. This would be a number that would clearly ensure that no bank or financial institution is particularly important in either its region or the nation. Such

³ See in support, New York Times of November 8, 2011, “End Bonuses for Bankers.”

additional competition will clearly be of benefit to consumers in terms of pricing and variety of products.

Today, the banking industry, at least for those with FDIC-insured deposits, may be “far too vanilla.”

Is the Volcker Rule Too Weak?

Senator Carl Levin, a key legislative architect of the Volcker Rule, has criticized the regulators for seeking to create a rule that will be far too weak to carry out the purposes of the Volcker Rule.⁴

Senator Levin’s concerns appear to be particularly related to the conflicts of interests at investment banks. But, we believe his comments are also applicable to all of the major provisions set forth by the Federal Reserve, OCC, FDIC and SEC in their original 298-page proposal.

Therefore, if the regulators cannot develop a Volcker Rule that Paul Volcker himself states he is proud of, as opposed to just accepting a rule due to current political realities, we should follow former FDIC Chairman Sheila Bair’s advice of scrapping it and starting anew.⁵

2012 View by the Regulators

As Congressman David Scott stated before the January 18, 2012 House Committee on Financial Services, “The Volcker rule goes at the central nervous system of our entire financial system and, if not implemented correctly, could really have a devastating impact on the economy.”⁶

Given the far too many regulators involved in enforcing and interpreting the Volcker Rule, and the difficulties of confirmation of permanent directors at many of the key regulatory agencies, we share Congressman David Scott’s concerns.

Perhaps, full authority for interpretation and enforcement of the Volcker Rule should be with the Federal Reserve with advisory comments from other key regulators, particularly the FDIC.

⁴ See, American Banker of November 20, 2011, “Levin Slams Volcker Rule Proposal as Too Weak.”

⁵ See, Fortune Magazine of December 26, 2011, “We Need a New Volcker Rule for Banks.”

⁶ See, Wall Street Journal of January 19, 2012, “Regulators Defend ‘Volcker Rule.’”

Impact of Volcker Rule on Other Nations

The National Institute of Banking and Finance has contended that the purpose of the Volcker Rule's exemption for trading in the United States should extend to foreign government bonds, as expressed by the Canadian and Japanese governments. Perhaps there should be an additional commentary period for all nations, not just Japan and Canada, to comment on the impact of what is clearly a rule that will have global implications.

The National Asian American Coalition suggests input from all major democratic Asian economies, such as India, Taiwan and the Philippines.

Similarly, the Black Economic Council urges comments from African democracies, such as the Republic of South Africa.

The Latino Business Chamber of Greater Los Angeles suggests that comments should also be secured from the growing number of Latino American democracies, such as Mexico, Brazil and Argentina.

Future Efforts

Given the growing debate and the likelihood of the comment period being extended, we will be further consulting on this matter with two of the most prominent and well-respected public interest former regulators, former Comptroller of the Currency under President Clinton, Eugene Ludwig, and former Chairman of the FDIC under both presidents Bush and Obama, Sheila Bair.⁷

Respectfully submitted,

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⁷ The groups have confirmed separate meetings with Eugene Ludwig and Sheila Bair on February 15, 2012.