

US Securities & Exchange Commission

Dear Sir/Madam:

As a concerned citizen I support the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act does not go far enough to regulate the risky, activities of large banks that imperil our economy, or to eliminate the moral hazard associated with institutions determined by regulators to be too big to fail, but I am sure enforcement of it by your commission will serve the interests of most Americans. Investment and commercial banks seem to do far too little to promote economic growth in sectors other than the financial sector -- growth that would enhance general prosperity rather than the prosperity of a tiny minority who insulate themselves within the confines of the financial industry; who seem to exist solely for the promotion of their own self-interest. Sadly, promotion of their self-interest comes at the expense of the general, wage-earning population.

Toward that goal, I believe it is imperative that the SEC vigorously enforce the Dodd-Frank Wall Street Reform and Consumer Protection Act, especially the provisions related to proprietary trading. Further, I urge the SEC to resist the threat of "cognitive capture" that comes with exclusive exposure to industry insiders -- to consider the threat under-regulated banks and investment firms pose to the future of our nation as evidenced by so many prior disasters, i.e. the Great Depression, the Savings & Loan crash, the sub-prime implosion, et cetera. Consider the health and prosperity of citizens who lack the credentials or the means to join the exclusive club of over-compensated bankers and hedge fund managers.

Do the job your commission was chartered to do (as described on your website): The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, our investor protection mission is more compelling than ever.

As our nation's securities exchanges mature into global for-profit competitors, there is even greater need for sound market regulation.

And the common interest of all Americans in a growing economy that produces jobs, improves our standard of living, and protects the value of our savings means that all of the SEC's actions must be taken with an eye toward promoting the capital formation that is necessary to sustain economic growth.

Please find attached the letter submitted to you by Senators Merkly and Levin relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act -- for the

record, I want to echo their sentiments.

Thanks for you efforts on behalf of all American citizens.

Regards,
Jim Welke

United States Senate
WASHINGTON, DC 20510

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August 3, 2010

Hon. Ben Bernanke, Chairman, and
Hon. Daniel Tarullo, Governor
Federal Reserve Board
20th Street and Constitution Avenue NW
Washington, DC 20551

Hon. Mary Shapiro, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Hon. Gary Gensler, Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Hon. Sheila Bair, Chairman
Federal Deposit Insurance Commission
550 17th Street, NW
Washington, DC 20429

Hon. John Dugan, Comptroller, and
Mr. John Walsh, Acting Comptroller-
designate
Office of the Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

RE: Implementation of Merkley-Levin Provisions

Dear Sir or Madam:

Two weeks ago, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law is clear: the risky and abusive financial practices that drove our country into an economic ditch must end. Now, as you set out to implement this legislation, the American people are counting on you to fully and faithfully follow that directive. For reform to work, Wall Street cannot simply be allowed to return to business-as-usual.

As essential components of the Wall Street reform effort, the Merkley-Levin provisions on proprietary trading and conflicts of interest, sections 619-621 of the Dodd-Frank Act, are designed to achieve five main objectives:

- 1) Protect our economy from high-risk, conflict-ridden financial activities by barring depository banks and their affiliates from engaging in proprietary trading and making large investments in hedge funds and private equity funds.
- 2) Rein in dangerous risk-taking by subjecting critical nonbank financial institutions to strict capital charges and quantitative limits on any proprietary trading and investments in hedge funds and private equity funds.
- 3) Reestablish market discipline and integrity by restricting the ability of banks and critical nonbank financial institutions to bail out sponsored or advised hedge funds and private equity funds.
- 4) Rehabilitate the traditional business of banking by conducting a significant review of the long-term investment activities currently permitted to banks and their affiliates.
- 5) End the conflicts of interest that arise when a financial firm designs an asset-backed security, sells it to customers, and then bets on its failure.

If properly implemented, the impact of these provisions will be profound.

We do not expect Wall Street to give up its risky and conflict-ridden trading operations without a fight. But the Merkley-Levin provisions, which we drafted, are intended to give you strong tools to protect our nation's families and small businesses from the vagaries of the Wall Street casino.

We wish to help you use these tools to their fullest potential, and we write now with our recommendations for drafting the rules and regulations to fully and faithfully implement these provisions. Enclosed please find the detailed explanation that we provided during the debate on the Senate floor, which will hopefully be helpful to you as regulators tasked with the difficult but necessary job of making these provisions come to life.

Naturally, there are many complex areas that will need to be carefully analyzed, rules thoughtfully written, and enforcement rigorously conducted – including robust use of the strong anti-evasion authority. At this time, we would like to briefly address three issues that have already received attention: (1) what types of activities are “market-making-related”, (2) what are allowable relationships with hedge funds and private equity funds, and (3) what do the conflicts of interest provisions of sections 619(d)(2) and 621 intend to address.

Market-Making-Related

We have recently seen press reports suggesting that firms are responding to some of these new restrictions by taking what amounts to two approaches: (1) burying their proprietary trading in their market-making accounts, and (2) reassigning their proprietary traders into asset management units managing client money.

The fact of these developments on their own suggests that the statutory provisions have the teeth that Congress intended. However, they also highlight the need for meaningful and faithful implementation. For example, banks seeking to bury their proprietary trading desks in their “market-making” operations are likely attempting to evade these restrictions, while banks who move traders to separate asset management businesses to manage clients’ funds are likely taking laudable steps towards compliance.

Done properly, market-making is not a speculative enterprise, and firms’ revenues should largely arise from bid-ask spreads and associated fees, rather than from changes in the prices of the financial instruments being traded. Regulations seeking to distinguish market-making from proprietary trading activities will require routine data from banks on the volume of trading being conducted, the size of the accumulated positions, the length of time positions remain open, average bid-ask spreads, and the volatility of profits and losses, among other information.

It is also important to note that the term “in facilitation of customer relations” was removed from the final version of the Merkley-Levin provisions out of the concern that the phrase was too subjective, ambiguous, and susceptible to abuse. This means banks will have to establish that their market-making-related purchases and sales are not designed merely to facilitate customer relationships, but are intended to meet the reasonably expected near term demands of clients for specific financial instruments.

Relationships with Hedge Funds and Private Equity Funds

Some of the most intense negotiation over the Merkley-Levin provisions concerned the extent to which banks that provide client asset management services would be permitted to invest in hedge and private equity funds. The final language includes strong protections to ensure that the limited exceptions intended to preserve asset management functions do not become backdoor proprietary trading operations. Preventing these exceptions from becoming such a loophole will require careful implementation and vigorous enforcement.

The Merkley-Levin provisions limit banks to a “de minimis” amount of money that can be invested in any given fund (at most, 3% in each fund) and in all funds in the aggregate (at most, 3% of Tier 1 capital). This de minimis allowance is permitted only to enable banks or their affiliates to provide asset management services to clients, and not to open the door to proprietary trading. However, these investments, and the banks’ relationships with them, cannot be allowed to jeopardize the banks. Accordingly, regulations implementing these provisions should only allow for a bank investment as necessary to seed a fund or align the interests of the bank with the fund investors. Seeding funds should be limited to the minimum amount necessary to attract investors to the investment strategy of the fund and must not serve principally as a proprietary investment. Regulators should issue rules treating hedge and private equity funds with large initial investments from the sponsoring bank and funds that are not effectively marketed to

investors as evasions of the Merkley-Levin restrictions. Similarly, co-investments designed to align the firm with its clients must not be excessive, and should not allow for firms to evade the intent of the restrictions of this section.

Further, the Merkley-Levin provisions prohibit banks from bailing out their sponsored or advised funds or investors in those funds, or from having relationships or engaging in transactions that make such bailouts more likely. For example, investments by officers and directors could create inappropriate incentives to bail out funds. Similarly, maintaining lending and derivatives relationships with sponsored funds would make such bailouts possible. Both are generally prohibited. Regulations implementing these restrictions should be strict, and the penalties for violations, severe.

Another critical factor to minimize bank risk from hedge funds and private equity funds is to require the bank to deduct investments in hedge funds and private equity funds on, at a minimum, a one-to-one basis from capital. As the leverage of a fund increases, the capital charges should be increased to reflect the greater risk of loss. Regulations implementing these capital charges should discourage these high-risk investments and limit them to the size necessary to facilitate management of clients' assets.

During the crisis, banks jeopardized their financial stability, and ultimately needed taxpayer bailouts, because they bailed out the funds they managed. Our banking system, and our taxpayers, must never again be left holding the bag when a bank's hedge funds or private equity funds collapse.

Conflicts of Interest

Section 619(d)(2) prohibits what might otherwise be permitted activities, if such activities would involve or result in material conflicts of interest with clients, customers, or counterparties. This conflicts of interest prohibition seeks to restore integrity and stability to the financial marketplace, making it safe for clients to place their investments with firms that are required to work on their behalf instead of betting against their interests. Unlike section 621, section 619(d)(2) is not limited to asset-back securities, but applies to all types of permitted trading activities.

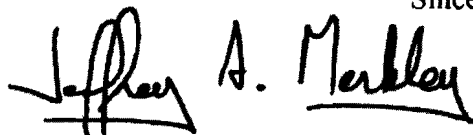
Regulations implementing section 619(d)(2) should pay particular attention not only to the financial activities of a bank's own traders, but also to the hedge funds and private equity funds organized and offered under subparagraph (G) to ensure that they are not taking unfair advantage of information on the trading flow of the banks' other clients. Hedging activities should also be particularly scrutinized to ensure that information about client trading is not improperly utilized.

Section 621 in the Merkley-Levin provisions also addresses conflicts of interest, but only in the context of asset-backed securities. This section prohibits firms from packaging and selling asset-backed securities to their clients and then engaging in transactions that create conflicts of interest between them and their clients. The Permanent Subcommittee on Investigations' hearing on Goldman Sachs highlighted a blatant example of this practice: the firm assembled asset-backed securities, sold those securities to clients, bet against them, and then profited from the failures. Regulations implementing section 621 should put an end to those conflict-ridden practices.

The conflict of interest prohibition in section 621 is not intended to prevent firms from supporting an asset-backed security in the after-market. But this activity must be designed to support the value of the security, not undermine it. Further, the utility of disclosures must be carefully examined, and not be seen as a cure for the conflicts. We provided the Securities and Exchange Commission with sufficient authority to define the contours of the rule in such a way as to remove conflicts of interest from these transactions, while also protecting the healthy functioning of our capital markets.

Implemented properly, the Merkley-Levin provisions on proprietary trading and conflicts of interest are critical elements in Congress's mandate to reestablish a financial system that provides capital to grow the economy while serving clients with integrity. We are ready to assist you during the rulemaking process in any way we can, and encourage you to consult us and our staffs with any questions about how the rules were designed to function.

Sincerely,



Jeffrey Merkley



Carl Levin

cc: Hon. Timothy Geithner, Secretary of the Treasury
Hon. Paul Volcker, Chairman, President's Economic Recovery Advisory Board

Street and in our financial sector have a direct impact on Main Street and the lives of every American. We need to ensure that taxpayers are never again asked to bail out Wall Street.

This financial reform legislation will prevent another financial sector collapse, or at least will help prevent it. I do not think any of us can say this will prevent any future collapse, but it is critically important to helping us prevent another collapse. It will allow the government to shut down firms that threaten to crater our economy and ensure that the financial industry, not taxpayers, is on the hook for any costs. It will rein in risky derivatives and other risky trading practices that undermined some of our largest financial institutions. It will help level the playing field for smaller banks and credit unions by cracking down on the risky practices of Wall Street and nonbank financial institutions that caused the financial crisis.

I am grateful to Senator DODD, the Banking Committee, and members of the conference for working with me to make certain that the final bill recognizes the special circumstances of community banks and credit unions in rural States such as mine. In particular, I appreciate the committee's modification to the lending limit standards. This is very important to farming communities across the country.

The final bill also provides added flexibility for rural lenders in the new mortgage standards as well as provisions to improve interchange reform for smaller financial institutions. Finally, I am pleased the committee included a risk-focused deposit insurance fund assessment formula and modified risk retention requirements for high quality loans.

Especially I thank Senator DODD for his extraordinary leadership. What a final year in the Senate. What a remarkable legacy he is leaving. I think the annals of the Senate will show very few Senators have had a record of accomplishment that matches what Senator DODD will have done in this year.

With respect to the budget point of order that has been raised against the conference report, let me make a couple of general points. First, this budget violation is not significant enough to merit derailing this important legislation. Second, we must bear in mind the risks of failing to act. If we fail to protect against a future collapse and create an orderly process for dealing with giant insolvent financial institutions, it is inevitable that taxpayers will again at some future point be asked to bail out the financial sector and prevent a catastrophic financial collapse. If one measures on any scale the differences between the technical violation in this budget point of order against what would happen if this legislation fails, they cannot even be compared. I mean, it is a gnat against an elephant. So let's keep things in mind here.

Second, we must bear in mind the risk of failing to act because that would burden taxpayers in a way far beyond anything we see with this budget point of order. None of us wants that. This bill is an insurance policy against an expensive future taxpayer bailout.

The point of order that has been raised is the long-term deficit point of order, a point of order I established in the budget resolution of 2008. This point of order prohibits legislation that worsens the deficit by more than \$5 billion in any of the four 10-year periods following 2019.

CBO has determined that at least in one of those four 10-year periods, the conference report would exceed this threshold. But this is really just a timing issue caused by the new bipartisan resolution authority created by the bill. This is the new authority given to the government to wind down failing financial firms. Under the resolution authority, if a financial firm is about to collapse, the government will use the firm's assets to wind it down and put it out of business. If the firm's assets are insufficient, the government will temporarily borrow funds from the Treasury. The financial industry will then reimburse the government and the taxpayers for 100 percent of the cost. Again, 100 percent of the money will be paid back by the banks. So the net impact on the deficit is zero.

Overall, the bill saves \$3.2 billion over the first 10 years, according to the Congressional Budget Office. So while technically this budget point of order lies, if you pierce the veil and look at what really happens, this bill reduces the deficit, according to the Congressional Budget Office, which is the non-partisan scorekeeper here in the Senate. Because there is a lag time for the government to collect this money from the financial industry, CBO scores the bill as increasing the deficit in some of the later decades. But all of that money will be paid back in ensuing years, and that is what matters most in this case.

So although this bill does technically violate the long-term deficit point of order, it is insignificant. The fact is, this bill reduces the deficit, according to the Congressional Budget Office. So I urge my colleagues to waive the point of order, to support passage of this financial reform legislation, which is clearly a significant step in the right direction in preventing the kind of risk to our Nation's economy that is so apparent with the current structure.

Again, I thank the chairman for his extraordinary work not only on this bill but throughout the year and, I think all of us know, throughout his career.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. DODD. Mr. President, before my friend, the chairman of the Budget Committee, leaves, let me thank him immensely for his analysis of this

issue. He has it, as we saw as well, exactly right. In fact, it is not only repaying 100 percent but with interest. There is an interest requirement, that if we borrow from the taxpayers in order to wind down substantially risky firms, then not only do you get paid back, but the interest on the cost of that money is also part of the deal. So it is 100 percent-plus coming back to the Treasury.

But his analysis and that of his committee—and there is no one who has been more disciplined or guarded about the budgetary process over the years we have served together, and so I appreciate the Senator's analysis of this particular point on the long-term deficit.

I commend the Senator for including the provisions he has and trying to build some discipline into the process of how we expend taxpayer moneys, collect taxes in the first place to pay for the needed expenditures of our government. So I thank the Senator for that.

I thank him for his comments as well about the bill and his support and also the substantive contributions the Senator from North Dakota has made, because one of the things we tried to be very careful about—JON TESTER of Montana, who sits on the committee with me, has been very careful and been tremendously active in seeing to it that rural America is going to be well served by this legislation. And there are differences. It is not all Wall Street, New York, and major financial centers. The importance of the availability of credit in rural communities is critical, as my colleague from North Dakota has informed me over the years we have served together. That ability of a local farmer to borrow that money in the spring, to be able to pay back in the fall, at harvest time, has been essential, and knowing how difficult it has been throughout the country to have access to credit is essential.

So his contributions to the legislation make sure that what we do here is going to enhance the capability of rural America to not only come out of this crisis we are in but to prosper in the years ahead with this legislation. So beyond the budgetary considerations and the points of order before us, I thank him for his contributions to the substance of the bill, which has made it a far better bill to begin with.

I see my colleague from Oregon is here. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Mr. President, I thank Chairman DODD for yielding to me and for his leadership on financial reform.

I yield to Senator LEVIN.

Mr. LEVIN. Mr. President, Senator MERKLEY and I, as the principal authors of sections 619, 620, and 621 of the Dodd-Frank Act, thought it might be helpful to explain in some detail those sections, which are based on our bill, S. 3098, called the Protect Our Recovery

Through Oversight of Proprietary, PROP. Trading Act of 2010, and the subsequently filed Merkley-Levin Amendment, No. 4101, to the Dodd-Lincoln substitute, which was the basis of the provision adopted by the Conference Committee.

I yield the floor to my colleague, Senator MERKLEY.

Mr. MERKLEY. I thank Senator LEVIN and will be setting forth here our joint explanation of the Merkley-Levin provisions of the Dodd-Frank Act. Sections 619, 620 and 621 do three things: prohibit high-risk proprietary trading at banks, limit the systemic risk of such activities at systemically significant nonbank financial companies, and prohibit material conflicts of interest in asset-backed securitizations.

Sections 619 and 620 amend the Bank Holding Company Act of 1956 to broadly prohibit proprietary trading, while nevertheless permitting certain activities that may technically fall within the definition of proprietary trading but which are, in fact, safer, client-oriented financial services. To account for the additional risk of proprietary trading among systemically critical financial firms that are not banks, bank holding companies, or the like, the sections require nonbank financial companies supervised by the Federal Reserve Board, the "Board", to keep additional capital for their proprietary trading activities and subject them to quantitative limits on those activities. In addition, given the unique control that firms who package and sell asset-backed securities (including synthetic asset-backed securities) have over transactions involving those securities, section 621 protects purchasers by prohibiting those firms from engaging in transactions that involve or result in material conflicts of interest.

First, it is important to remind our colleagues how the financial crisis of the past several years came to pass. Beginning in the 1980's, new financial products and significant amounts of deregulation undermined the Glass-Steagall Act's separation of commercial banking from securities brokerage or "investment banking" that had kept our banking system relatively safe since 1833.

Over time, commercial and investment banks increasingly relied on precarious short term funding sources, while at the same time significantly increasing their leverage. It was as if our banks and securities firms, in competing against one another, were race car drivers taking the curves ever more tightly and at ever faster speeds. Meanwhile, to match their short-term funding sources, commercial and investment banks drove into increasingly risky, short-term, and sometimes theoretically hedged, proprietary trading. When markets took unexpected turns, such as when Russia defaulted on its debt and when the U.S. mortgage-backed securities market collapsed, liquidity evaporated, and financial firms became insolvent very rapidly. No

amount of capital could provide a sufficient buffer in such situations.

In the face of the worst financial crisis in 80 years, the January 2009 report by the Group of 30, an international group of financial experts, placed blame squarely on proprietary trading. This report, largely authored by former Federal Reserve System Chairman Paul Volcker, recommended prohibiting systemically critical banking institutions from trading in securities and other products for their own accounts. In January 2010, President Barack Obama gave his full support to common-sense restrictions on proprietary trading and fund investing, which he coined the "Volcker Rule."

The "Volcker Rule," which Senator LEVIN and I drafted and have championed in the Senate, and which is embodied in section 619, embraces the spirit of the Glass-Steagall Act's separation of "commercial" from "investment" banking by restoring a protective barrier around our critical financial infrastructure. It covers not simply securities, but also derivatives and other financial products. It applies not only to banks, but also to nonbank financial firms whose size and function render them systemically significant.

While the intent of section 619 is to restore the purpose of the Glass-Steagall barrier between commercial and investment banks, we also update that barrier to reflect the modern financial world and permit a broad array of low-risk, client-oriented financial services. As a result, the barrier constructed in section 619 will not restrict most financial firms.

Section 619 is intended to limit proprietary trading by banking entities and systemically significant nonbank financial companies. Properly implemented, section 619's limits will tamp down on the risk to the system arising from firms competing to obtain greater and greater returns by increasing the size, leverage, and riskiness of their trades. This is a critical part of ending too big to fail financial firms. In addition, section 619 seeks to reorient the U.S. banking system away from leveraged, short-term speculation and instead towards the safe and sound provision of long-term credit to families and business enterprises.

We recognize that regulators are essential partners in the legislative process. Because regulatory interpretation is so critical to the success of the rule, we will now set forth, as the principal authors of Sections 619 to 621, our explanations of how these provisions work.

Section 619's prohibitions and restrictions on proprietary trading are set forth in a new section 13 to the Bank Holding Company Act of 1956, and subsection (a), paragraph (1) establishes the basic principle clearly: a banking entity shall not "engage in proprietary trading" or "acquire or retain . . . ownership interest(s) in or sponsor a hedge fund or private equity fund", unless otherwise provided in the section.

Paragraph (2) establishes the principle for nonbank financial companies supervised by the Board by subjecting their proprietary trading activities to quantitative restrictions and additional capital charges. Such quantitative limits and capital charges are to be set by the regulators to address risks similar to those which lead to the flat prohibition for banking entities.

Subsection (h), paragraph (1) defines "banking entity" to be any insured depository institution (as otherwise defined under the Bank Holding Company Act), any entity that controls an insured depository institution, any entity that is treated as a bank holding company under section 8 of the International Banking Act of 1978, and any affiliates or subsidiaries of such entities. We and the Congress specifically rejected proposals to exclude the affiliates and subsidiaries of bank holding companies and insured depository institutions, because it was obvious that restricting a bank, but not its affiliates and subsidiaries, would ultimately be ineffective in restraining the type of high-risk proprietary trading that can undermine an insured depository institution.

The provision recognizes the modern reality that it is difficult to separate the fate of a bank and its bank holding company, and that for the bank holding company to be a source of strength to the bank, its activities, and those of its other subsidiaries and affiliates, cannot be at such great risk as to imperil the bank. We also note that not all banks pose the same risks. Accordingly, the paragraph provides a narrow exception for insured depository institutions that function principally for trust purposes and do not hold public depositor money, make loans, or access Federal Reserve lending or payment services. These specialized entities that offer very limited trust services are elsewhere carved out of the definition of "bank," so we do not treat them as banks for the purposes of the restriction on proprietary trading. However, such institutions are covered by the restriction if they qualify under the provisions covering systemically important nonbank financial companies.

Subsection (h), paragraph (3) defines nonbank financial companies supervised by the Board to be those financial companies whose size, interconnectedness, or core functions are of sufficiently systemic significance as to warrant additional supervision, as directed by the Financial Stability Oversight Council pursuant to Title I of the Dodd-Frank Act. Given the varied nature of such nonbank financial companies, for some of which proprietary trading is effectively their business, an outright statutory prohibition on such trading was not warranted. Instead, the risks posed by their proprietary trading is addressed through robust capital charges and quantitative limits that increase with the size, interconnectedness, and systemic importance of the

business functions of the nonbank financial firm. These restrictions should become stricter as size, leverage, and other factors increase. As with banking entities, these restrictions should also help reduce the size and risk of these financial firms.

Naturally, the definition of "proprietary trading" is critical to the provision. For the purposes of section 13, proprietary trading means "engaging as a principal for the trading account" in transactions to "purchase or sell, or otherwise acquire or dispose of" a wide range of traded financial products, including securities, derivatives, futures, and options. There are essentially three key elements to the definition: (1) the firm must be acting "as a principal," (2) the trading must be in its "trading account" or another similar account, and (3) the restrictions apply to the full range of its financial instruments.

Purchasing or selling "as a principal" refers to when the firm purchases or sells the relevant financial instrument for its own account. The prohibition on proprietary trading does not cover trading engaged with exclusively client funds.

The term "trading account" is intended to cover an account used by a firm to make profits from relatively short-term trading positions, as opposed to long-term, multi-year investments. The administration's proposed Volcker Rule focused on short-term trading, using the phrase "trading book" to capture that concept. That phrase, which is currently used by some bank regulators was rejected, however, and the ultimate conference report language uses the term "trading account" rather than "trading book" to ensure that all types of accounts used for proprietary trading are covered by the section.

To ensure broad coverage of the prohibition on proprietary trading, paragraph (3) of subsection (h) defines "trading account" as any account used "principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements)" and such other accounts as the regulators determine are properly covered by the provision to fulfill the purposes of the section. In designing this definition, we were aware of bank regulatory capital rules that distinguish between short-term trading and long-term investments, and our overall focus was to restrict high-risk proprietary trading. For banking entity subsidiaries that do not maintain a distinction between a trading account and an investment account, all accounts should be presumed to be trading accounts and covered by the restriction.

Linking the prohibition on proprietary trading to trading accounts permits banking entities to hold debt securities and other financial instruments in long-term investment portfolios. Such investments should be maintained with the appropriate cap-

ital charges and held for longer periods.

The definition of proprietary trading in paragraph (4) covers a wide range of financial instruments, including securities, commodities, futures, options, derivatives, and any similar financial instruments. Pursuant to the rule of construction in subsection (g), paragraph (2), the definition should not generally include loans sold in the process of securitizing; however, it could include such loans if such loans become financial instruments traded to capture the change in their market value.

Limiting the definition of proprietary trading to near-term holdings has the advantage of permitting banking entities to continue to deploy credit via long-term capital market debt instruments. However, it has the disadvantage of failing to prevent the problems created by longer-term holdings in riskier financial instruments, for example, highly complex collateralized debt obligations and other opaque instruments that are not readily marketable. To address the risks to the banking system arising from those longer-term instruments and related trading, section 620 directs Federal banking regulators to sift through the assets, trading strategies, and other investments of banking entities to identify assets or activities that pose unacceptable risks to banks, even when held in longer-term accounts. Regulators are expected to apply the lessons of that analysis to tighten the range of investments and activities permissible for banking entities, whether they are at the insured depository institution or at an affiliate or subsidiary, and whether they are short or long term in nature.

The new Bank Holding Company Act section 13 also restricts investing in or sponsoring hedge funds and private equity funds. Clearly, if a financial firm were able to structure its proprietary positions simply as an investment in a hedge fund or private equity fund, the prohibition on proprietary trading would be easily avoided, and the risks to the firm and its subsidiaries and affiliates would continue. A financial institution that sponsors or manages a hedge fund or private equity fund also incurs significant risk even when it does not invest in the fund it manages or sponsors. Although piercing the corporate veil between a fund and its sponsoring entity may be difficult, recent history demonstrates that a financial firm will often feel compelled by reputational demands and relationship preservation concerns to bail out clients in a failed fund that it managed or sponsored, rather than risk litigation or lost business. Knowledge of such concerns creates a moral hazard among clients, attracting investment into managed or sponsored funds on the assumption that the sponsoring bank or systemically significant firm will rescue them if markets turn south, as was done by a number of firms during the

2008 crisis. That is why setting limits on involvement in hedge funds and private equity funds is critical to protecting against risks arising from asset management services.

Subsection (h), paragraph (2) sets forth a broad definition of hedge fund and private equity fund, not distinguishing between the two. The definition includes any company that would be an investment company under the Investment Company Act of 1940, but is excluded from such coverage by the provisions of sections 3(c)(1) or 3(c)(7). Although market practice in many cases distinguishes between hedge funds, which tend to be trading vehicles, and private equity funds, which tend to own entire companies, both types of funds can engage in high risk activities and it is exceedingly difficult to limit those risks by focusing on only one type of entity.

Despite the broad prohibition on proprietary trading set forth in subsection (a), the legislation recognizes that there are a number of low-risk proprietary activities that do not pose unreasonable risks and explicitly permits those activities to occur. Those low-risk proprietary trading activities are identified in subsection (d), paragraph (1), subject to certain limitations set forth in paragraph (2), and additional capital charges required in paragraph (3).

While paragraph (1) authorizes several permitted activities, it simultaneously grants regulators broad authority to set further restrictions on any of those activities and to supplement the additional capital charges provided for by paragraph (3).

Subparagraph (d)(1)(A) authorizes the purchase or sale of government obligations, including government-sponsored enterprise, GSE, obligations, on the grounds that such products are used as low-risk, short-term liquidity positions and as low-risk collateral in a wide range of transactions, and so are appropriately retained in a trading account. Allowing trading in a broad range of GSE obligations is also meant to recognize a market reality that removing the use of these securities as liquidity and collateral positions would have significant market implications, including negative implications for the housing and farm credit markets. By authorizing trading in GSE obligations, the language is not meant to imply a view as to GSE operations or structure over the long-term, and permits regulators to add restrictions on this permitted activity as necessary to prevent high-risk proprietary trading activities under paragraph (2). When GSE reform occurs, we expect these provisions to be adjusted accordingly. Moreover, as is the case with all permitted activities under paragraph (1), regulators are expected to apply additional capital restrictions under paragraph (3) as necessary to account for the risks of the trading activities.

Subparagraph (d)(1)(B) permits underwriting and market-making-related

transactions that are technically trading for the account of the firm but, in fact, facilitate the provision of near-term client-oriented financial services. Market-making is a customer service whereby a firm assists its customers by providing two-sided markets for speedy acquisition or disposition of certain financial instruments. Done properly, it is not a speculative enterprise, and revenues for the firm should largely arise from the provision of credit provided, and not from the capital gain earned on the change in the price of instruments held in the firm's accounts. Academic literature sets out the distinctions between making markets for customers and holding speculative positions in assets, but in general, the two types of trading are distinguishable by the volume of trading, the size of the positions, the length of time that positions remains open, and the volatility of profits and losses, among other factors. Regulations implementing this permitted activity should focus on these types of factors to assist regulators in distinguishing between financial firms assisting their clients versus those engaged in proprietary trading. Vigorous and robust regulatory oversight of this issue will be essential to the prevent "market-making" from being used as a loophole in the ban on proprietary trading.

The administration's draft language, the original section 619 contemplated by the Senate Banking Committee, and amendment 4101 each included the term "in facilitation of customer relations" as a permitted activity. The term was removed in the final version of the Dodd-Frank Act out of concern that this phrase was too subjective, ambiguous, and susceptible to abuse. At the same time, we recognize that the term was previously included to permit certain legitimate client-oriented services, such pre-market-making accumulation of small positions that might not rise to the level of fully "market-making" in a security or financial instrument, but are intended to nonetheless meet expected near-term client liquidity needs. Accordingly, while previous versions of the legislation referenced "market-making", the final version references "market-making-related" to provide the regulators with limited additional flexibility to incorporate those types of transactions to meet client needs, without unduly warping the common understanding of market-making.

We note, however, that "market-making-related" is not a term whose definition is without limits. It does not implicitly cover every time a firm buys an existing financial instrument with the intent to later sell it, nor does it cover situations in which a firm creates or underwrites a new security with the intent to market it to a client. Testimony by Goldman Sachs Chairman Lloyd Blankfein and other Goldman executives during a hearing before the Permanent Subcommittee on Investigations seemed to suggest

that any time the firm created a new mortgage related security and began soliciting clients to buy it, the firm was "making a market" for the security. But one-sided marketing or selling securities is not equivalent to providing a two-sided market for clients buying and selling existing securities. The reality was that Goldman Sachs was creating new securities for sale to clients and building large speculative positions in high-risk instruments, including credit default swaps. Such speculative activities are the essence of proprietary trading and cannot be properly considered within the coverage of the terms "market-making" or "market-making-related."

The subparagraph also specifically limits such underwriting and market-making-related activities to "reasonably expected near term demands of clients, customers, and counterparties." Essentially, the subparagraph creates two restrictions, one on the expected holding period and one on the intent of the holding. These two restrictions greatly limit the types of risks and returns for market-makers. Generally, the revenues for market-making by the covered firms should be made from the fees charged for providing a ready, two-sided market for financial instruments, and not from the changes in prices acquired and sold by the financial institution. The "near term" requirement connects to the provision in the definition of trading account whereby the account is defined as trading assets that are acquired "principally for the purpose of selling in the near term." The intent is to focus firms on genuinely making markets for clients, and not taking speculative positions with the firm's capital. Put simply, a firm will not satisfy this requirement by acquiring a position on the hope that the position will be able to be sold at some unknown future date for a trading profit.

Subparagraph (d)(1)(C) permits a banking entity to engage in "risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of the banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings." This activity is permitted because its sole purpose is to lower risk.

While this subparagraph is intended to permit banking entities to utilize their trading accounts to hedge, the phrase "in connection with and related to individual or aggregated positions . . ." was added between amendment 4101 and the final version in the conference report in order to ensure that the hedge applied to specific, identifiable assets, whether it be on an individual or aggregate basis. Moreover, hedges must be to reduce "specific risks" to the banking entity arising from these positions. This formulation is meant to focus banking entities on traditional hedges and prevent propri-

etary speculation under the guise of general "hedging." For example, for a bank with a significant set of loans to a foreign country, a foreign exchange swap may be an appropriate hedging strategy. On the other hand, purchasing commodity futures to "hedge" inflation risks that may generally impact the banking entity may be nothing more than proprietary trading under another name. Distinguishing between true hedges and covert proprietary trades may be one of the more challenging areas for regulators, and will require clear identification by financial firms of the specific assets and risks being hedged, research and analysis of market best practices, and reasonable regulatory judgment calls. Vigorous and robust regulatory oversight of this issue will be essential to the prevent "hedging" from being used as a loophole in the ban on proprietary trading.

Subparagraph (d)(1)(D) permits the acquisition of the securities and other affected financial instruments "on behalf of customers." This permitted activity is intended to allow financial firms to use firm funds to purchase assets on behalf of their clients, rather than on behalf of themselves. This subparagraph is intended, in particular, to provide reassurance that trading in "street name" for customers or in trust for customers is permitted.

In general, subparagraph (d)(1)(E) provides exceptions to the prohibition on investing in hedge funds or private equity funds, if such investments advance a "public welfare" purpose. It permits investments in small business investment companies, which are a form of regulated venture capital fund in which banks have a long history of successful participation. The subparagraph also permits investments "of the type" permitted under the paragraph of the National Bank Act enabling banks to invest in a range of low-income community development and other projects. The subparagraph also specifically mentions tax credits for historical building rehabilitation administered by the National Park Service, but is flexible enough to permit the regulators to include other similar low-risk investments with a public welfare purpose.

Subparagraph (d)(1)(F) is meant to accommodate the normal business of insurance at regulated insurance companies that are affiliated with banks. The Volcker Rule was never meant to affect the ordinary business of insurance: the collection and investment of premiums, which are then used to satisfy claims of the insured. These activities, while definitionally proprietary trading, are heavily regulated by State insurance regulators, and in most cases do not pose the same level of risk as other proprietary trading.

However, to prevent abuse, firms seeking to rely on this insurance-related exception must meet two essential qualifications. First, only trading for the general account of the insurance firm would qualify. Second, the

trading must be subject to adequate State-level insurance regulation. Trading by insurance companies or their affiliates that is not subject to insurance company investment regulations will not qualify for protection here.

Further, where State laws and regulations do not exist or otherwise fail to appropriately connect the insurance company investments to the actual business of insurance or are found to inadequately protect the firm, the subparagraph's conditions will not be met.

Subparagraph (d)(1)(G) permits firms to organize and offer hedge funds or private equity funds as an asset management service to clients. It is important to remember that nothing in section 619 otherwise prohibits a bank from serving as an investment adviser to an independent hedge fund or private equity fund. Yet, to serve in that capacity, a number of criteria must be met.

First, the firm must be doing so pursuant to its provision of bona fide trust, fiduciary, or investment advisory services to customers. Given the fiduciary obligations that come with such services, these requirements ensure that banking entities are properly engaged in responsible forms of asset management, which should tamp down on the risks taken by the relevant fund.

Second, subparagraph (d)(1)(G) provides strong protections against a firm bailing out its funds. Clause (iv) prohibits banking entities, as provided under paragraph (1) and (2) of subsection (f), from entering into lending or similar transactions with related funds, and clause (v) prohibits banking entities from "directly or indirectly, guarantee[ing], assum[ing], or otherwise insur[ing] the obligations or performance of the hedge fund or private equity fund." To prevent banking entities from engaging in backdoor bailouts of their invested funds, clause (v) extends to the hedge funds and private equity funds in which such subparagraph (G) hedge funds and private equity funds invest.

Third, to prevent a banking entity from having an incentive to bailout its funds and also to limit conflicts of interest, clause (vii) of subparagraph (G) restricts directors and employees of a banking entity from being invested in hedge funds and private equity funds organized and offered by the banking entity, except for directors or employees "directly engaged" in offering investment advisory or other services to the hedge fund or private equity fund. Fund managers can have "skin in the game" for the hedge fund or private equity fund they run, but to prevent the bank from running its general employee compensation through the hedge fund or private equity fund, other management and employees may not.

Fourth, by stating that a firm may not organize and offer a hedge fund or private equity fund with the firm's name on it, clause (vi) of subparagraph

(G) further restores market discipline and supports the restriction on firms bailing out funds on the grounds of reputational risk. Similarly, clause (viii) ensures that investors recognize that the funds are subject to market discipline by requiring that funds provide prominent disclosure that any losses of a hedge fund or private equity fund are borne by investors and not by the firm, and the firm must also comply with any other restrictions to ensure that investors do not rely on the firm, including any of its affiliates or subsidiaries, for a bailout.

Fifth, the firm or its affiliates cannot make or maintain an investment interest in the fund, except in compliance with the limited fund seeding and alignment of interest provisions provided in paragraph (4) of subsection (d). This paragraph allows a firm, for the limited purpose of maintaining an investment management business, to seed a new fund or make and maintain a "de minimis" co-investment in a hedge fund or private equity fund to align the interests of the fund managers and the clients, subject to several conditions. As a general rule, firms taking advantage of this provision should maintain only small seed funds, likely to be \$5 to \$10 million or less. Large funds or funds that are not effectively marketed to investors would be evasions of the restrictions of this section. Similarly, co-investments designed to align the firm with its clients must not be excessive, and should not allow for firms to evade the intent of the restrictions of this section.

These "de minimis" investments are to be greatly disfavored, and subject to several significant restrictions. First, a firm may only have, in the aggregate, an immaterial amount of capital in such funds, but in no circumstance may such positions aggregate to more than 3 percent of the firm's Tier 1 capital. Second, by one year after the date of establishment for any fund, the firm must have not more than a 3 percent ownership interest. Third, investments in hedge funds and private equity funds shall be deducted on, at a minimum, a one-to-one basis from capital. As the leverage of a fund increases, the capital charges shall be increased to reflect the greater risk of loss. This is specifically intended to discourage these high-risk investments, and should be used to limit these investments to the size only necessary to facilitate asset management businesses for clients.

Subparagraphs (H) and (I) recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law. However, these subparagraphs are not intended to permit a U.S. banking entity to avoid the restrictions on proprietary trading simply by setting up an offshore subsidiary or reincorporating offshore, and regulators

should enforce them accordingly. In addition, the subparagraphs seek to maintain a level playing field by prohibiting a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.

Subparagraph (J) permits the regulators to add additional exceptions as necessary to "promote and protect the safety and soundness of the banking entity and the financial stability of the United States." This general exception power is intended to ensure that some unforeseen, low-risk activity is not inadvertently swept in by the prohibition on proprietary trading. However, the subparagraph sets an extremely high bar: the activity must be necessary to promote and protect the safety and soundness of the banking entity and the financial stability of the United States, and not simply pose a competitive disadvantage or a threat to firms' profitability.

Paragraph (2) of section (d) adds explicit statutory limits to the permitted activities under paragraph (1). Specifically, it prevents an activity from qualifying as a permitted activity if it would "involve or result in a material conflict of interest," "result directly or indirectly in a material exposure . . . to high-risk assets or high-risk trading strategies" or otherwise pose a threat to the safety and soundness of the firm or the financial stability of the United States. Regulators are directed to define the key terms in the paragraph and implement the restrictions as part of the rulemaking process. Regulators should pay particular attention to the hedge funds and private equity funds organized and offered under subparagraph (G) to ensure that such activities have sufficient distance from other parts of the firm, especially those with windows into the trading flow of other clients. Hedging activities should also be particularly scrutinized to ensure that information about client trading is not improperly utilized.

The limitation on proprietary trading activities that "involve or result in a material conflict of interest" is a companion to the conflicts of interest prohibition in section 621, but applies to all types of activities rather than just asset-backed securitizations.

With respect to the definition of high-risk assets and high-risk trading strategies, regulators should pay close attention to the characteristics of assets and trading strategies that have contributed to substantial financial loss, bank failures, bankruptcies, or the collapse of financial firms or financial markets in the past, including but not limited to the crisis of 2008 and the financial crisis of 1998. In assessing high-risk assets and high-risk trading strategies, particular attention should be paid to the transparency of the markets, the availability of consistent pricing information, the depth of the markets, and the risk characteristics

of the assets and strategies themselves, including any embedded leverage. Further, these characteristics should be evaluated in times of extreme market stress, such as those experienced recently. With respect to trading strategies, attention should be paid to the role that certain types of trading strategies play in times of relative market calm, as well as times of extreme market stress. While investment advisors may freely deploy high-risk strategies for their clients, attention should be paid to ensure that firms do not utilize them for their own proprietary activities. Barring high risk strategies may be particularly critical when policing market-making-related and hedging activities, as well as trading otherwise permitted under subparagraph (d)(1)(A). In this context, however, it is irrelevant whether or not a firm provides market liquidity: high-risk assets and high-risk trading strategies are never permitted.

Subsection (d), paragraph (3) directs the regulators to set appropriate additional capital charges and quantitative limits for permitted activities. These restrictions apply to both banking entities and nonbank financial companies supervised by the Board. It is left to regulators to determine if those restrictions should apply equally to both, or whether there may appropriately be a distinction between banking entities and non-bank financial companies supervised by the Board. The paragraph also mandates diversification requirements where appropriate, for example, to ensure that banking entities do not deploy their entire permitted amount of de minimis investments into a small number of hedge funds or private equity funds, or that they dangerously over-concentrate in specific products or types of financial products.

Subsection (e) provides vigorous anti-evasion authority, including record-keeping requirements. This authority is designed to allow regulators to appropriately assess the trading of firms, and aggressively enforce the text and intent of section 619.

The restrictions on proprietary trading and relationships with private funds seek to break the internal connection between a bank's balance sheet and taking risk in the markets, with a view towards reestablishing market discipline and refocusing the bank on its credit extension function and client services. In the recent financial crisis, when funds advised by banks suffered significant losses, those off-balance sheet funds came back onto the banks' balance sheets. At times, the banks bailed out the funds because the investors in the funds had other important business with the banks. In some cases, the investors were also key personnel at the banks. Regardless of the motivations, in far too many cases, the banks that bailed out their funds ultimately relied on taxpayers to bail them out. It is precisely for this reason that the permitted activities under subparagraph (d)(1)(G) are so narrowly defined.

Indeed, a large part of protecting firms from bailing out their affiliated funds is by limiting the lending, asset purchases and sales, derivatives trading, and other relationships that a banking entity or nonbank financial company supervised by the Board may maintain with the hedge funds and private equity funds it advises. The relationships that a banking entity maintains with and services it furnishes to its advised funds can provide reasons why and the means through which a firm will bail out an advised fund, be it through a direct loan, an asset acquisition, or through writing a derivative. Further, providing advisory services to a hedge fund or private equity fund creates a conflict of interest and risk because when a banking entity is itself determining the investment strategy of a fund, it no longer can make a fully independent credit evaluation of the hedge fund or private equity fund borrower. These bailout protections will significantly benefit independent hedge funds and private equity funds, and also improve U.S. financial stability.

Accordingly, subsection (f), paragraph (1) sets forth the broad prohibition on a banking entity entering into any "covered transactions" as such term is defined in the Federal Reserve Act's section 23A, as if such banking entity were a member bank and the fund were an affiliate thereof. "Covered transactions" under section 23A includes loans, asset purchases, and, following the Dodd-Frank bill adoption, derivatives between the member bank and the affiliate. In general, section 23A sets limits on the extension of credit between such entities, but paragraph (1) of subsection (f) prohibits all such transactions. It also prohibits transactions with funds that are controlled by the advised or sponsored fund. In short, if a banking entity organizes and offers a hedge fund or private equity fund or serves as investment advisor, manager, or sponsor of a fund, the fund must seek credit, including from asset purchases and derivatives, from an independent third party.

Subsection (f), paragraph (2) applies section 23B of the Federal Reserve Act to a banking entity and its advised or sponsored hedge fund or private equity fund. This provides, inter alia, that transactions between a banking entity and its fund be conducted at arms length. The fact that section 23B also includes the provision of covered transactions under section 23A as part of its arms-length requirement should not be interpreted to undermine the strict prohibition on such transactions in paragraph (1).

Subsection (f), paragraph (3) permits the Board to allow a very limited exception to paragraph (1) for the provision of certain limited services under the rubric of "prime brokerage" between the banking entity and a third-party-advised fund in which the fund managed, sponsored, or advised by the banking entity has taken an ownership interest. Essentially, it was argued

that a banking entity should not be prohibited, under proper restrictions, from providing limited services to unaffiliated funds, but in which its own advised fund may invest. Accordingly, paragraph (3) is intended to only cover third-party funds, and should not be used as a means of evading the general prohibition provided in paragraph (1). Put simply, a firm may not create tiered structures and rely upon paragraph (3) to provide these types of services to funds for which it serves as investment advisor.

Further, in recognition of the risks that are created by allowing for these services to unaffiliated funds, several additional criteria must also be met for the banking entity to take advantage of this exception. Most notably, on top of the flat prohibitions on bailouts, the statute requires the chief executive officer of firms taking advantage of this paragraph to also certify that these services are not used directly or indirectly to bail out a fund advised by the firm.

Subsection (f), paragraph (4) requires the regulatory agencies to apply additional capital charges and other restrictions to systemically significant nonbank financial institutions to account for the risks and conflicts of interest that are addressed by the prohibitions for banking entities. Such capital charges and other restrictions should be sufficiently rigorous to account for the significant amount of risks associated with these activities.

To give markets and firms an opportunity to adjust, implementation of section 620 will proceed over a period of several years. First, pursuant to subsection (b), paragraph (1), the Financial Stability Oversight Council will conduct a study to examine the most effective means of implementing the rule. Then, under paragraph (b)(2), the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall each engage in rulemakings for their regulated entities, with the rulemaking coordinated for consistency through the Financial Stability Oversight Council. In coordinating the rulemaking, the Council should strive to avoid a "lowest common denominator" framework, and instead apply the best, most rigorous practice from each regulatory agency.

Pursuant to subsection (c), paragraph (1), most provisions of section 619 become effective 12 months after the issuance of final rules pursuant to subsection (b), but in no case later than 2 years after the enactment of the Dodd-Frank Act. Paragraph (c)(2) provides a 2-year period following effective date of the provision during which entities must bring their activities into conformity with the law, which may be extended for up to 3 more years. Special illiquid funds may, if necessary, receive one 5-year extension and may

also continue to honor certain contractual commitments during the transition period. The purpose of this extended wind-down period is to minimize market disruption while still steadily moving firms away from the risks of the restricted activities.

The definition of "illiquid funds" set forth in subsection (h) paragraph (7) is meant to cover, in general, very illiquid private equity funds that have deployed capital to illiquid assets such as portfolio companies and real estate with a projected investment holding period of several years. The Board, in consultation with the SEC, should therefore adopt rules to define the contours of an illiquid fund as appropriate to capture the intent of the provision. To facilitate certainty in the market with respect to divestiture, the Board is to conduct a special expedited rule-making regarding these conformance and wind-down periods. The Board is also to set capital rules and any additional restrictions to protect the banking entities and the U.S. financial system during this wind-down period.

We noted above that the purpose of section 620 is to review the long-term investments and other activities of banks. The concerns reflected in this section arise out of losses that have appeared in the long-term investment portfolios in traditional depository institutions.

Over time, various banking regulators have displayed expansive views and conflicting judgments about permissible investments for banking entities. Some of these activities, including particular trading strategies and investment assets, pose significant risks. While section 619 provides numerous restrictions to proprietary trading and relationships to hedge funds and private equity funds, it does not seek to significantly alter the traditional business of banking.

Section 620 is an attempt to reevaluate banking assets and strategies and see what types of restrictions are most appropriate. The Federal banking agencies should closely review the risks contained in the types of assets retained in the investment portfolio of depository institutions, as well as risks in affiliates' activities such as merchant banking. The review should dovetail with the determination of what constitutes "high-risk assets" and "high risk trading strategies" under paragraph (d)(2).

At this point, I yield to Senator LEVIN to discuss an issue that is of particular interest to him involving section 621's conflict of interest provisions.

Mr. LEVIN. I thank my colleague for the detailed explanation he has provided of sections 619 and 620, and fully concur in it. I would like to add our joint explanation of section 621, which addresses the blatant conflicts of interest in the underwriting of asset-backed securities highlighted in a hearing with Goldman Sachs before the Permanent Subcommittee on Investigations, which I chair.

The intent of section 621 is to prohibit underwriters, sponsors, and others who assemble asset-backed securities, from packaging and selling those securities and profiting from the securities' failures. This practice has been likened to selling someone a car with no brakes and then taking out a life insurance policy on the purchaser. In the asset-backed securities context, the sponsors and underwriters of the asset-backed securities are the parties who select and understand the underlying assets, and who are best positioned to design a security to succeed or fail. They, like the mechanic servicing a car, would know if the vehicle has been designed to fail. And so they must be prevented from securing handsome rewards for designing and selling malfunctioning vehicles that undermine the asset-backed securities markets. It is for that reason that we prohibit those entities from engaging in transactions that would involve or result in material conflicts of interest with the purchasers of their products.

Section 621 is not intended to limit the ability of an underwriter to support the value of a security in the aftermarket by providing liquidity and a ready two-sided market for it. Nor does it restrict a firm from creating a synthetic asset-backed security, which inherently contains both long and short positions with respect to securities it previously created, so long as the firm does not take the short position. But a firm that underwrites an asset-backed security would run afoul of the provision if it also takes the short position in a synthetic asset-backed security that references the same assets it created. In such an instance, even a disclosure to the purchaser of the underlying asset-backed security that the underwriter has or might in the future bet against the security will not cure the material conflict of interest.

We believe that the Securities and Exchange Commission has sufficient authority to define the contours of the rule in such a way as to remove the vast majority of conflicts of interest from these transactions, while also protecting the healthy functioning of our capital markets.

In conclusion, we would like to acknowledge all our supporters, co-sponsors, and advisers who assisted us greatly in bringing this legislation to fruition. From the time President Obama announced his support for the Volcker Rule, a diverse and collaborative effort has emerged, uniting community bankers to old school financiers to reformers. Senator MERKLEY and I further extend special thanks to the original cosponsors of the PROP Trading Act, Senators TED KAUFMAN, SHERROD BROWN, and JEANNE SHAHEEN, who have been with us since the beginning.

Senator JACK REED and his staff did yeoman's work in advancing this cause. We further tip our hat to our tireless and vocal colleague, Senator

BYRON DORGAN, who opposed the repeal of Glass-Steagall and has been speaking about the risks from proprietary trading for a number of years. Above all, we pay tribute to the tremendous labors of Chairman CHRIS DODD and his entire team and staff on the Senate Banking Committee, as well as the support of Chairman BARNEY FRANK and Representative PAUL KANJORSKI. We extend our deep gratitude to our staffs, including the entire team and staff at the Permanent Subcommittee on Investigations, for their outstanding work. And last but not least, we highlight the visionary leadership of Paul Volcker and his staff. Without the support of all of them and many others, the Merkley-Levin language would not have been included in the Conference Report.

We believe this provision will stand the test of time. We hope that our regulators have learned with Congress that tearing down regulatory walls without erecting new ones undermines our financial stability and threatens economic growth. We have legislated to the best of our ability. It is now up to our regulators to fully and faithfully implement these strong provisions.

I yield the floor to Senator MERKLEY. Mr. MERKLEY. I thank my colleague for his remarks and concur in all respects.

Mr. DODD. Mr. President, I said so yesterday, and I will say it again: I thank Senator MERKLEY. I guess there are four new Members of the Senate serving on the Banking Committee. Senator MERKLEY, Senator WARNER, Senator TESTER, and Senator BENNET are all new Members of the Senate from their respective States of Oregon, Virginia, Montana, and Colorado. To be thrown into what has been the largest undertaking of the Banking Committee, certainly in my three decades here—and many have argued going back almost 100 years—was certainly an awful lot to ask.

I have already pointed out the contribution Senator WARNER has made to this bill. But I must say as well that Senator BENNET of Colorado has been invaluable in his contributions. I just mentioned Senator TESTER a moment ago for his contribution on talking about rural America and the importance of those issues. And Senator MERKLEY, as a member of the committee, on matters we included here dealing particularly with the mortgage reforms, the underwriting standards, the protections people have to go through, and credit cards as well—we passed the credit card bill—again, it was Senator JEFF MERKLEY of Oregon who played a critical role in that whole debate not to mention, of course, working with CARL LEVIN, one of the more senior Members here, having served for many years in the Senate. But the Merkley-Levin, Levin-Merkley provisions in this bill have added substantial contributions to this effort. So I thank him for his contribution.

I see my colleague from North Dakota is here. I suggest the absence of a