SEC Derivatives
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Thank you for providing this opportunity to comment on the proposed rules regarding derivatives trading. Although the topic under consideration is proposed regulation pertaining to derivatives, and I'll get to that, let me begin by sharing a recent experience of my own. I think it points to the problems we've faced and will continue to face as we move forward with regulations under the Dodd-Frank Act.

In early 2012, I refinanced my home in Southern Utah. A neighbor who is a well-established realtor recommended I see a mortgage person with whom she deals regularly. I set up an appointment to see what terms I might get on a refi. When I reviewed the paperwork after the initial meeting, I started questioning the fees. After all, this was early 2012 – still part of the Great Recession and a shaky market – and I wondered why the fees were higher than fees for a refi done in 2004, when things were really getting ramped up in the real estate market and economy in general. I compared the 2012 fees with records I'd kept from 2004 and realized the mortgage gal had not given me an APR. The rate was attractive but an APR was needed. I asked her to provide that, and she said she could not "because of the Dodd/Frank Act" which I thought was very odd. I went home and did some research on the act and saw nothing that seemed to confirm what she said. So, I asked her to tell me where in the act it states that an APR cannot be provided. She then said, "Well, I don't know specifically. That's just what our managers told us." Needless to say, I left there and found another person to handle my refi. By this time, I'd made some additional calls to find title companies and appraisers with lower fees. When I met with the new mortgage person and asked for an APR, he was fine with that and provided it. When I told him what I'd experienced at the other company, he was not all that surprised that they were using the legislation to manipulate customers and get higher fees as a result.

I share this story to illustrate my concerns that the market is already manipulating things and the consumer again will be the fall guy (or gal) if strong rules and regulations are not put in place. The "free market" – that so many like to tout as the ticket to individual and national prosperity – must be structured so those with so much to lose – those who don't understand the intricacies of that market – are protected. That's what we count on the Government to do – to act as referee, to stand between us and those who often only operate in their best interest. From what I've researched and studied, the focus by the money makers on Wall Street and the mortgage industry specifically targeted those who stood very little chance of understanding what they were up against. I'm a college-educated person with a reasonable sense of how things should work and more than a little dose of skepticism. What if I'd been a poorly-educated person, with little understanding? Would I have questioned the mortgage person's assertion that Dodd-Frank limited her ability to provide an APR? Would I have even expected an APR?

I've been in the market for thirty plus years. I've lived through the late 80s events, the late 90s (tech bubble) and now the 2007 and beyond housing bubble. I've lost money in all, but somehow have come out better than many with my retirement not threatened. But, every experience has cut away at my trust in the market making me much more concerned and less willing to advise my kids and others to invest in the market. But, then, one has to ask where else is there? There used to be real estate investing and for some with the stomach for it and the savvy, that still exists. I'm sure there are many taking advantage of that right now clean up the debris as scavengers are wont to do.

So, back to Dodd-Frank and my home refi. I was actually glad to see the amount of documentation that was required that "attempts" to ensure that the home owner has income by referencing past tax returns and other income source information. No "interest-only" and other designer loans that encouraged those with little or no income to get a mortgage should be allowed. *Those who packaged and sold those loan bonds as part of the derivative market "just because people wanted those investments" should never again be allowed to control the game and prey on those in our society who can least afford to provide a source of income to our nation's high rollers*. The fact that the Fed had raised interest rates had no effect on the clever manipulators coming up with ever more creative ways of getting people to borrow money.

Then of course, there were those who bet against the mortgage-backed bonds that were being so cleverly packaged – similar to the nuclear waste being package with good and bad mixed to confound and confuse some into believing it's "really *all* ok" – those who shorted the deals recognizing, rather hoping, that at some point it would all blow up. *People should never be allowed to bet against something as "basic and necessary" to citizens' welfare as their homes*. Particularly when the whole game is rigged.

Will the Dodd-Frank Act and its efforts to control derivatives in the future be successful? Already some are feeling success will not be achieved given MF Global's recent experience. Are those who are leading this effort, the SEC, really on the right track or will they be led again by the nose? I've read and studied quite a lot in an effort to learn about the events leading up to and after the bailouts. Some have said that the bailouts were necessary and a good thing, that there have been bailouts before and that they are often profitable, at little cost to the government and successful. Others point out that bailouts are a corruption of capitalism and cause excessive risk taking by those who know – or hope – that they'll be bailed out and are too big to fail. The mega banks are bigger now than in 2007, a cause of great concern to many of us.

Wall Street leaders who profited at the public's expense – and who many fear will be in control again – have even been compared to the 'coyotes' of Arizona who traffic in illegal immigrants often at great financial and bodily harm to those they seek to exploit. The same personality traits that are seen in the coyotes – greed, disregard for the welfare of others, egocentricity, paranoia, being above the law, arrogance, inability to recognize the faults in their own thinking, aggressiveness, excessive risk taking behaviors, placing blame on others – are the same traits identified in our Wall Street leaders. Some have said the best and brightest are on Wall Street. It is not the best and brightest – it is the biggest risk takers. But even then they're different. Most gamblers are gambling with their own money. These players who control the SEC, rating house, and others are playing with everyone else's money. Nothing to be respected, and yet SEC and others continue to fall prey themselves. When will it stop? Will it stop? Is our nation just one big "neighborhood block" where the gangs (Wall Street) require respect and compliance by the neighborhood citizens (Feds, SEC, rating agencies) to achieve their goals?

Excuses for the bailouts and the Great Recession are still being offered. One Federal Reserve member I listened to during a panel discussion compared the event leading up to the bailouts as a Black Swan – an event that no one could have predicted because it didn't play into the "historical" models they use to evaluate risk. Poppycock! This was no Black Swan event. This was an explanation by this individual to get the Feds and others off the hook for not being smart enough – or concerned enough – to look past their models, read the news that was several years prior to event predicting catastrophe, and stand up to those who were controlling the game – Wall Street. If, as this individual asserted, "innovation" spooks the market – and we can only assume much more in the future – then we are all destined to more great financial upheaval and Dodd-Frank is just an exercise in futility. This individual even stated that "regulation can't prevent crises." If so, then why are we paying all these Government officials? We could certainly save some money there. His assertion is that "more robust" institutions are needed that can "roll with the punches" – more robust meaning "enhanced capital". Isn't that regulation? It does seem that Basel model might be useful to ensure that capital levels are sufficient to cover future losses. *Anything even approaching 40 to 1 leverage should never again be allowed to happen!*

I'm sure that most of the comments you receive will be very technical and provided by industry people who understand the minutiae of the Act. My comments may seem very basic, but I've attempted to wade through as best I can and glean some basics I feel worth mentioning. And, since the derivatives portion of the Act is so closely tied to the full Act, I find it difficult to not mention some issues that may be in the full Act but not in the proposal specifically.

FSOC (Financial Stability Oversight Council): This is part of the Act that is of some concern. Although I am not sure that Bernanke, Paulson and Geitner made reasonable decisions, I certainly wonder if FSOC would be workable when a crisis hits? Will people in all these groups that don't agree in the best of circumstances come to a consensus? Will bad decisions be the result rather than good? The regulations under Dodd-Frank should be constructed such that having to rely on this group should never really happen. The structure should be so tight and well enforced that they will not be required.

Swaps should be managed *transparently* through a *mandatory clearing house* and money *required* to cover those swaps. Although it's true that clearing houses do have their problems, this is at least a step to help the problem. ***More capital money must be required*** to reduce risk. The fact that credit default swaps had no money to back them up other than AIG is unbelievable to most reasonable human beings. Page 345 of the proposed rule causes me concern and seems to imply that we are not much better off now than before:

> "…when the Dodd-Frank OTC derivatives reforms are implemented, ANC broker-dealers could significantly increase their holdings of OTC derivatives. An increase in derivatives exposure that is uncollateralized would increase the exposure of the ANC broker-dealers to their derivatives counterparties. In turn, however, this proposed amendment should strengthen the capital positions of the ANC broker-dealers, and thereby reduce the likelihood of default of one of these entities.

Repo 105: **Window dressing financial reports with methods such as *Repo 105 should never again be allowed.*** I saw in the proposed regulations that the SEC is asking for comments concerning how to deal with the global market. According to Anton R. Valukas, Examiner in the Lehman bankruptcy, this was a vehicle used to "dress up" balance sheets using off-balance sheet transactions. This was made possible by working through Lehman's London branch and points to problems with global markets and transactions resulting from different standards. This was all done to confuse and keep Lehman clean to those they were working to confuse – investing public, rating agencies, Government regulators, and, apparently, even Lehman's Board of Directors (another topic possibly worth attention!). The fact that Lehman's outside auditor approved these transactions is additionally galling! So, why is the SEC seeking comments pertaining to how dealing with the global markets will be affected by our derivatives rules? We should be making decisions and holding companies feet to the fire to stick to our rules not go over "the pond" to see if they can get a better deal and not fashioning our rules to meet other countries' needs.

Volker Rule: I support a strict final version of the rule and feel it should not be diluted by those who challenge it – the financial industry. I find it interesting that the same businesses that have tried to confound the public with their brilliance are complaining about the *complexity* of the proposed rule. *And, the fact that some high-level regulators actually sided with the industry critics is particularly alarming!*

VaR Models and Risk: These risk assessment models did not do the job to help evaluate risk before. Why would we assume they can do the job in the future? People manipulated them before. Comments such as "…the Commission may propose using a specified haircut percentage (e.g., 15% as opposed to a percentage that is higher or lower) *because it believes, based on its experience regulating markets,* that such percentage *should* be sufficient to cover a severe market movement" don't give me much faith. It was the use of historical data to do risk evaluations that caused the Fed and others to lose sight of what was happening. Now, perhaps somewhere in this 500+ page document the details of how this 15% was determined are provided, but just reading this comment on its own did not make it clear to me.

ISDA (International Swaps & Derivatives Assn) – License to hunt! Oversight of these is imperative and they must not be run by Wall Street.

Credit agencies: Credit agencies should not be paid by those they rate! Moody's was a private company before going public in 2000 with revenues going from $800 million in 2001 to $2.03 billion in 2006. Part of the problem! These rating agencies should apparently not be public companies! Information shows that rating agencies lacked complete information on the bonds involved to accurately evaluate and rate them. They didn't demand the details of the underlying loans from traders and issuers because they didn't want to bite the hand that fed them. This is wrong!

*Title VII of the D-F Act established new regulatory framework for OTC derivatives to reduce risk, increase **transparency**, and promoted market integrity within the financial system by, among other things: (i) providing for the **registration and regulation** of SBSDs and MSBSPs; (ii) imposing **clearing and trade execution requirements** on standardized derivative products; (iii) creating **recordkeeping** and **real-time reporting regimes**; and (iv) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commissions oversight.* As an investor, this all sounds good. The proof will be in the details and enforcement. Concerns over what the Wall Street hoods are cooking up are developing for many of us.

Closing statement

As a simple investor, there are just too many specific in the 500+ page proposal document to address with any reasonable level of knowledge. And, of course, that's the problem. Once again simple investors are left to trust the dealings of those who in the past have seemed in cahoots and provide little reason to believe that will not happen again. The Wall Street hoods with all their money and influence may once again confuse and confound those who are supposed to be watching, rating, evaluating, questioning for the public's protection. I have great respect for Government employees who do the job they've been vested to do well, but it seems those may be few and far between. I hope – no, pray – that changes.

A Federal Reserve individual I heard speak was asked, "Why, if the Fed didn't understand an investment would they approve its use?" His answer: "There's a reluctance to micro-manage firm decisions." Correct me if I'm wrong, isn't that the job of the Federal Reserve and others who are overseeing these firms – to question and get answers they actually understand? Ben Bernanke remarked March of 2007, "The impact on the broader economy and the financial markets of the problems in the sub-prime markets seems likely to be contained." Was Mr. Bernanke lying, ignorant of what was happening and the real risk…or both?

In fact, perhaps it would really be best for firms to finally realize they will never again be bailed out from a great fall created by their own bad deeds. I as an investor might suffer financial loss through future failure, but it seems that is the way it must be. Balance sheets should be cleansed and reckless managers eliminated. Too big to fail should never be allowed. We see many of the same "perpetrating" firms bigger now than before the bailouts. If bailouts do occur, they should be punitive to:

Managers
Creditors
Shareholders
NOT EVERYONE!

Public faith in the system will be restored when people realize that bad behaviors will not be rewarded. And, perhaps, through the knowledge that they won't be bailed out, those who are too big to fail will actually start making wise decisions for their investors, themselves and stop just playing games with other people's money to elevate their own portfolios and support their inflated egos.

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