United States Senate

WASHINGTON, DC 20510

April 26, 2012

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

Hon. Martin Gruenberg, Acting Chairman
Federal Deposit Insurance Commission
550 17th Street, NW
Washington, DC 20429

Hon. Thomas Curry
Comptroller of the Currency
Department of the Treasury
Washington, DC 20219

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

RE: Proposed Rule to Implement Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds

Dear Messrs. Bernanke, Curry, Gensler, and Gruenberg, and Ms. Shapiro:

We write as the original sponsors, co-sponsors, and supporters of the effort to establish a strong wall between our nation's core banking system and high-risk, potentially conflicted trading activities. This wall, commonly known as the Volcker Rule, was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and will become effective in July of this year. We urge you to fully implement a clear, strong, and effective Volcker Rule without delay.

You have no doubt heard, as we have, from those who would like us to forget the causes of the financial crisis and forget why the Volcker Rule was enacted. Moreover, some argue that if the Volcker Rule is implemented properly, the financial markets will cease to function, forgetting that our financial markets became the envy of the world during the nearly 70 years that the

Glass-Steagall Act was in effect. But the economic consequences of the financial crisis on American families have been severe, and the American people demand that it not be repeated. We must remember the urgency of reform and the necessity for vibrant, healthy markets.

Numerous inquiries into the causes of the financial crisis, including the hearings of the Senate Permanent Subcommittee on Investigations and the Financial Crisis Inquiry Commission, established the need for these provisions.[1] Conflict-ridden, high-risk trading activities played a central role in big banks' accumulation of the failed toxic assets that helped freeze credit to businesses and families, and led to trillions of dollars of taxpayer-backed bailouts of the largest financial firms.[2]

To ensure that taxpayers are never again asked to bail out these bad bets, and that our economy never again suffer the consequences of excessive risk-taking on Wall Street, Congress adopted the Merkley-Levin provisions of the Dodd-Frank Act, which set forth the statutory basis for the Volcker Rule. These provisions: (1) separate core credit extension and customer banking services from hedge fund-like trading activities, (2) eliminate egregious conflicts of interest in bank trading activities, and (3) address similar risks at systemically significant non-bank financial firms. In short, the statute's mandate is to vigorously address systemic risk and conflicts of interest in major capital market activities.

While the vast majority of banks will be unaffected by the provisions, the prohibition on proprietary trading will unquestionably reduce some banks' trading. Proprietary trading, regardless of where it occurs within a bank, is prohibited.[3] These provisions are squarely aimed at the handful of very large banks that, with the implicit subsidy of taxpayers, dramatically

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[1] *See* "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse," Report and Appendix printed in connection with a series of hearings on "Wall Street and the Financial Crisis," before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 112-675, Volume 5, (April 13, 2011); FIN. CRISIS INQUIRY COMM'N, THE FIN. CRISIS INQUIRY COMM'N REPORT (Jan. 2011), *available at* http://www.fcic.gov/report; Matthew Richardson, NYU Stern School of Business, *Why the Volcker Rule is a Useful Tool for Managing Systemic Risk http://www.federalreserve.gov/SECRS/2012/March/20120315/R-1432/R-1432_021312_104959_543555370801_1.pdf*, submitted as comment letter to Fed. Res. Sys. et al (2012) at http://www.federalreserve.gov/SECRS/2012/March/20120315/R-1432/R-1432_021312_104959_543555370801_1.pdf; Letter from AFL-CIO, Americans for Financial Reform, U.S. PIRG to Hon. Ben. S. Bernanke, Fed. Res. Sys. (Feb. 13, 2012), at http://www.federalreserve.gov/SECRS/2012/February/20120217/R-1432/R-1432_021512_105492_542081694166_1.pdf; Letter from Dennis Kelleher et al, Better Markets Foundation, to Robert Feldman, Fed. Deposit Insur. Comm'n, (Feb. 13, 2012), at http://www.federalreserve.gov/SECRS/2012/March/20120309/R-1432/R-1432_021312_105537_519233431691_1.pdf.

[2] *See* James Andrew Felkerson, *A Detailed Look at the Fed's Crisis Response by Funding Facility and Recipient*, Public Policy Brief No. 123, Levy Economics Institute of Bard College, 2012.

[3] *See, e.g.,* Erik Schatzker et al, *JPMorgan Said to Transform Treasury to Prop Trading*, BLOOMBERG NEWS, April 13, 2012, at http://www.bloomberg.com/news/2012-04-13/jpmorgan-said-to-transform-treasury-to-prop-trading.html; Shannon Harrington et al, *JPMorgan Trader Iksil Fuels Prop-Trading Debate With Bets*, BLOOMBERG NEWS, April 9, 2012, at http://www.bloomberg.com/news/2012-04-09/jpmorgan-trader-iksil-fuels-prop-trading-debate-with-bets.html.

expanded their hedge fund-like trading operations in the run up to the crisis, and subsequently relied on taxpayers to bail them out.

U.S. capital markets will be the stronger under the Volcker Rule. With fewer conflicts of interest and more reliable market-makers, our markets will be healthy and vibrant, just as they were when the Glass-Steagall Act protected our financial system.[4] But we need you to fulfill the statutory mandate.

Your proposed rule from October was an important step towards implementing this law. Now is the time to finish the job. Some of us have criticized the proposal for failing to draw simple, clear lines and for adding loopholes. To be sure, the proposed rule is not perfect, but it should not be delayed or scrapped. Rather, we urge you to –

- adopt the best elements from the proposed rule;
- eliminate loopholes;
- draw clear lines based on objective data and observable markets;
- strengthen CEO and board-level accountability and public disclosure; and
- provide coordinated and consistent enforcement, including data sharing by regulators.

In addition, we urge you to maintain and ensure ease of compliance, as provided in the proposed rule, for the overwhelming number of community and regional banks that do not engage in covered activities.

The rule should be finalized this summer. The banks that will be directly impacted by the Volcker Rule have already had nearly two years to realign their businesses to comply with the broad contours of the rule, and many have already taken steps to do so. The statute itself provides for an additional two years – extendable up to five years – for financial firms to come into compliance with the Volcker Rule. During the period, additional guidance may be offered as new data becomes available or with respect to particular provisions that may require deeper analysis, for example, prohibited conflicts of interest or high-risk trading strategies. Setting out this guidance now is the path to providing industry, investors, and taxpayers the certainty they want regarding how this important firewall will be applied.

The American people suffered greatly because of the financial crisis. The Volcker Rule is a critical protection to help ensure that such a crisis does not happen again. The economy needs these protections, our constituents deserve these protections, and the law demands these protections. Please implement a clear, strong, and effective Volcker Rule without delay.

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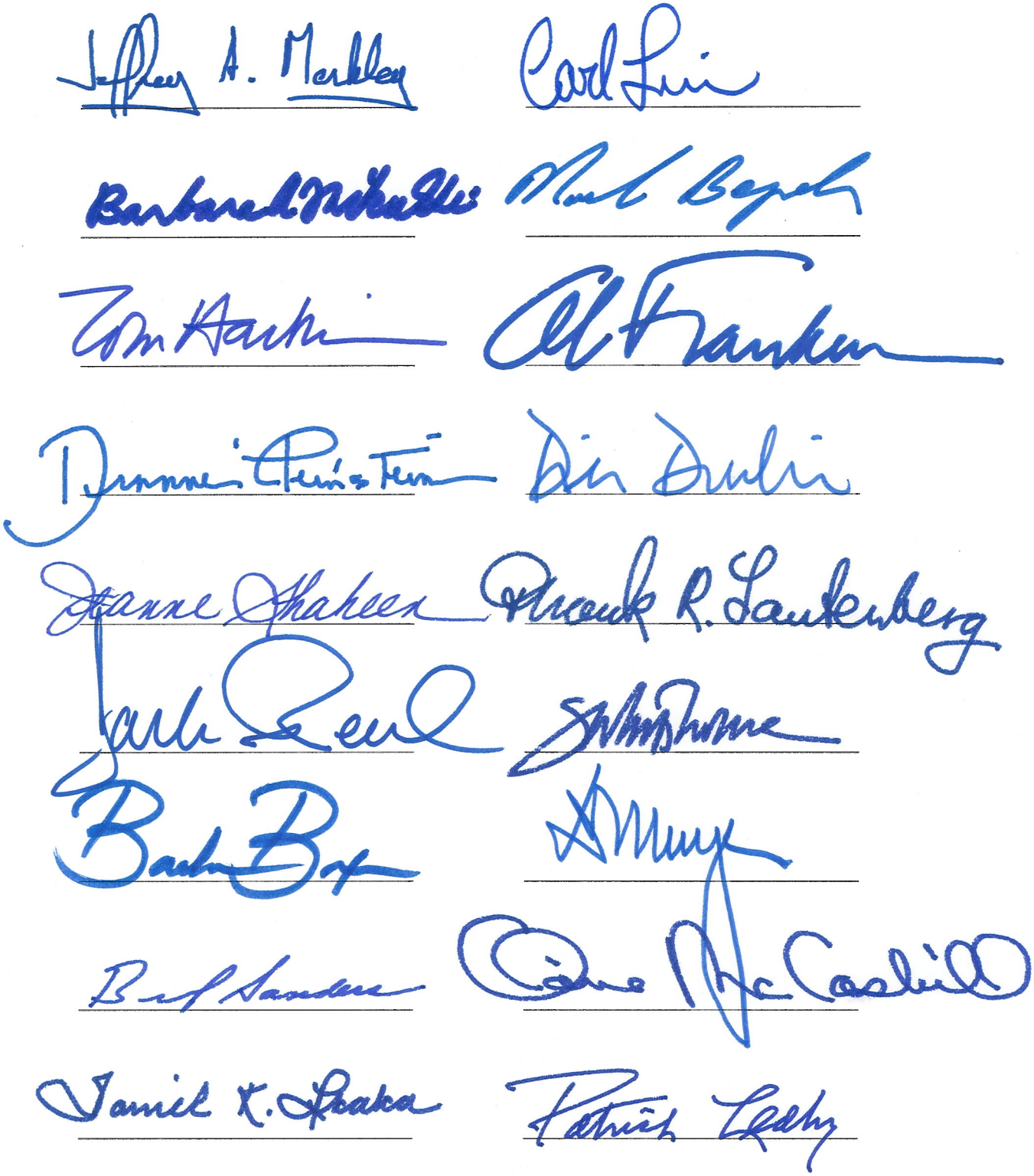
[4] *See, e.g.,* Peter Eavis, *Can Securitization Live With Volcker?*, N.Y. TIMES DEALBOOK, April 4, 2012, at http://dealbook.nytimes.com/2012/04/04/can-securitization-live-with-volcker/.

Sincerely,



Richard Shelby

Sherrod Brown

Ron Wyden

Jay Rockefeller

cc: Hon. Timothy Geithner, Secretary of the Treasury
Mr. Gene Sperling, Director, National Economic Council
Hon. Paul Volcker