

Merkley/Levin amendment

In our counteroffer to the House we are including an amendment to strengthen Section 619, the “Volcker rule.” A version of this amendment was introduced by Senators Merkley and Levin during consideration of the Senate bill. While their amendment did not come to a vote, it was widely recognized to contain provisions which strengthened Section 619 in important ways.

As you know, Section 619 places limits on bank participation in certain high-risk activities, including proprietary trading and investing in hedge funds and private equity funds. These limits also apply to firms organized as bank holding companies, and firms that own insured depositories.

One goal of these limits is to reduce participation in high-risk activity that can cause significant losses at institutions which are central to the financial system. A second goal is to end the use of low cost funds – to which insured depositories have access – from subsidize high risk activity.

Merkley Levin adopts the overall approach of our Section 619, but includes elements that improve it substantially. For example, the amendment:

- more clearly defines the limits on proprietary trading
- more strongly differentiates risk-mitigating hedging from other derivatives activity
- provides explicit conditions for insurers – who often own depositories or are organized as bank holding companies – to do the trading that is necessary to conduct the ordinary business of insurance
- adds important new provisions to prevent conflicts of interest on the part of sponsors and underwriters of asset-backed securities.

As you know, there were also many amendments offered on the floor which would have permitted some form of sponsorship of hedge funds and private equity funds. After examining the issue -- and in light of the strengthening of the Volcker rule achieved by provisions of Merkley Levin – we are now proposing to allow de minimus investment in hedge funds and private equity funds with strong provisions to prohibit companies from using funds to evade the proprietary trading limits.

Investment in hedge funds or private equity funds will be limited to no more than 3% of fund capital. And total investment in hedge funds and private equity funds will not exceed more than 3% of the firm's tangible common equity.

We think that the overall effect of the amendment we are offering is to strengthen the limitations on proprietary trading relative to the base text. Therefore we think it is worthy of support.