

United States Senate

WASHINGTON, DC 20510

October 28, 2010

Hon. Timothy Geithner, Chairman
Financial Stability Oversight Council and
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20520

Hon. Ben Bernanke, Vice Chairman
Financial Stability Oversight Council and
Chairman, Federal Reserve Board
20th Street and Constitution Avenue NW
Washington, DC 20551

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

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

Mr. John Walsh, Acting Comptroller
Office of the Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

Mr. Edward DeMarco, Acting Director
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552

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

Hon. Debbie Matz, Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Mr. William Haraf, Commissioner
California Department of Financial
Institutions, on behalf of the
Conference of State Bank Supervisors
1155 Connecticut Ave, NW, 5th Floor
Washington, DC 20036-4306

Mr. John Huff, Director
Missouri Department of Insurance,
on behalf of the National Association of
Insurance Commissioners
444 North Capitol Street, NW, Suite 701
Washington, DC 20001

Mr. David Massey, Deputy Administrator
North Carolina Securities Division,
on behalf of the North American Securities
Administrators Association
750 First Street, NE, Suite 1140
Washington, D.C. 20002

RE: FSOC-2010-0002: Implementation of the Merkley-Levin Provisions on Proprietary Trading and Conflicts of Interest (Section 619)

Dear Members of the Financial Stability Oversight Council:

The Dodd-Frank Wall Street Reform and Consumer Protection Act sets forth a clear mandate to end high-risk, conflict-ridden financial activities at our nation's banks and systemically significant nonbank financial companies. It does so by ending proprietary trading within our nation's banking entities, limiting their relationships with hedge funds and private equity funds, and restricting such activities at systemically significant nonbank financial companies, as well as explicitly prohibiting conflicts of interest.

As co-sponsors of the Merkley-Levin Amendment, which ultimately became Section 619 of the Dodd-Frank Act, we urge the Financial Stability Oversight Council (FSOC) to provide guidance to regulators that can help them effectively implement and enforce the statutory language as Congress intended.

After taxpayers were forced to bail out banks and other systemically significant financial companies whose proprietary trades went awry, we determined that the economy and taxpayers need strong protections against an increasingly casino-like financial system. High-risk investing is an appropriate and legitimate activity in a free market system, but it cannot again imperil our nation's economic well-being.

To ensure that the Merkley-Levin proprietary trading restrictions (also called the "Volcker Rule") are most effectively applied, Section 619 directs the FSOC to conduct a study and make recommendations on how to best implement its provisions. (Bank Holding Company Act of 1956 (12 U.S.C. 1841 et. seq.), §13(b), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §619 (2010).) As one of the FSOC's initial tasks, this study will be a critical test of whether the FSOC lives up to its statutory mandate of independence, regulatory cooperation, and professional analysis. We hope that each member of the FSOC, voting and non-voting, will participate fully in this effort.

In crafting recommendations to ensure the Merkley-Levin provisions are implemented as intended, the FSOC will undoubtedly need to address many issues. We would like to focus your attention, however, on a few critical points:

- The term "trading account" should cover all types of accounts that may be used to conduct proprietary trading.
- The extent of permitted activities, particularly "market making" and "risk mitigating hedging," should be strictly and clearly delineated to ensure that high-risk proprietary

trading stops, while economically beneficial and risk-reducing activities continue. Capital charges governing these permitted activities should also be vigorous enough to protect the economy and U.S. taxpayers from risks arising from them.

- The relationships between covered financial firms and the private funds they manage or sponsor should be carefully circumscribed to prevent those private funds from being used to circumvent the law's limits.
- The terms "material conflicts of interest" and "high risk" assets and trading strategies need to be meaningfully defined so as to safeguard U.S. taxpayers from unfair practices and systemic risk.
- Capital charges and quantitative limits for systemically significant nonbank financial companies should be vigorous so as both to discourage and to reduce the risks and conflicts of interest from proprietary trading at these entities.
- The law's anti-evasion provisions should be implemented in a way to ensure regulators have clear authority to prevent abusive and evasive tactics from undermining the Merkley-Levin provisions.

Implementing these provisions also means establishing a regulatory structure capable of meaningful enforcement. We urge you to consider recommending a two-tiered, cooperative regulatory structure. At the first tier, regulators should conduct real-time monitoring and enforcement. Trading and markets regulators, such as the Securities and Exchange Commission and Commodity Futures Trading Commission, may be in the best position to take a leadership role in monitoring trading and positions, much like they do for insider trading, position limits, and other trading provisions. The newly-created Office of Financial Research may assist in standardizing the data collection and review efforts. At the second tier, regulators should review firms' policies and procedures and conduct in-depth portfolio-level examinations. Banking regulators, such as the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve Board, may be in the best position to conduct these broader reviews of firms. This type of two-tiered, cooperative approach would enable regulators to share the implementation burdens and also play to their traditional strengths.

You have been assigned to a vital task: to protect the American people from a financial system that has too often been distorted by proprietary trading practices and conflicts of interest that placed a firm's own interests ahead of the interests of its clients. We recognize that reining in these practices will not be easy. Despite having just emerged as a nation from the worst financial crisis since the Great Depression, powerful interests will seek to weaken the Merkley-Levin Volcker Rule protections. We in Congress resisted those efforts and provided you with a clear mandate and broad authority to act. The American people are now relying upon you to fully carry out the law.

Thank you for this opportunity to comment on the FSOC study to implement Dodd-Frank Section 619.

Sincerely,



Senator Jeff Merkley



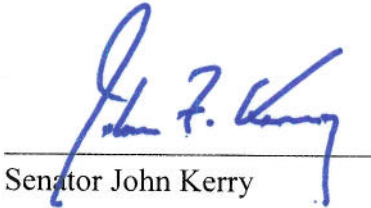
Senator Carl Levin



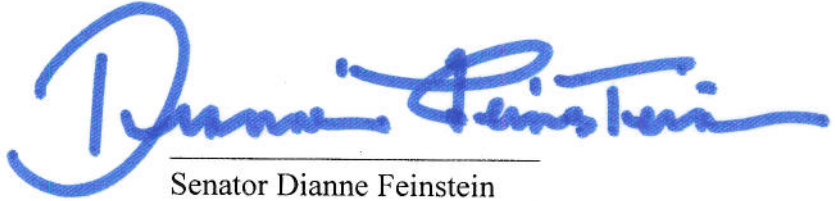
Senator Dick Durbin



Senator Tom Harkin



Senator John Kerry



Senator Dianne Feinstein



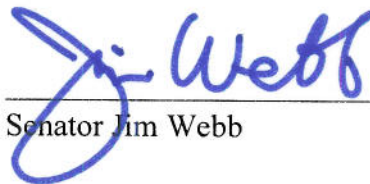
Senator Bill Nelson



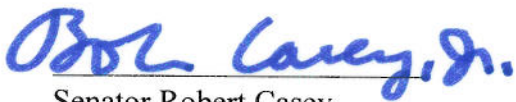
Senator Sherrod Brown



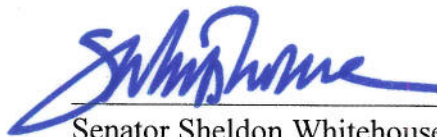
Senator Claire McCaskill



Senator Jim Webb



Senator Robert Casey



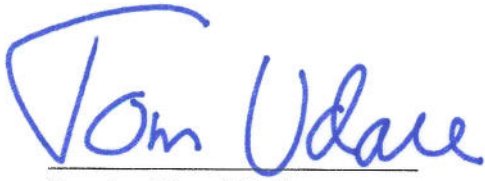
Senator Sheldon Whitehouse



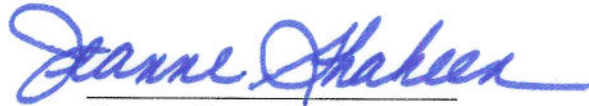
Senator Bernie Sanders



Senator Mark Udall



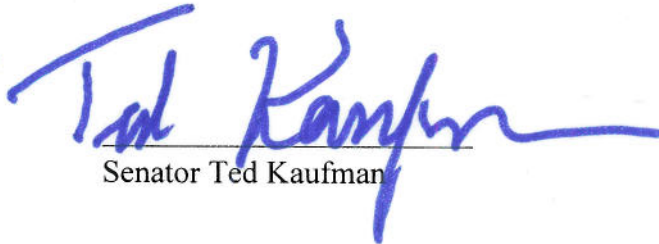
Senator Tom Udall



Senator Jeanne Shaheen



Senator Mark Begich



Senator Ted Kaufman

cc: Hon. Austan Goolsbee, Chairman, Council of Economic Advisers
Hon. Paul Volcker, Chairman, President's Economic Recovery Advisory Board