THE VOLCKER RULE: RULE IMPLEMENTATION ISSUES AND STUDY GUIDE

Gerald Epstein, Political Economy Research Institute, University of Massachusetts, Amherst

October 4, 2010

Summary

The "Volcker Rule"/Merkley-Levin Provisions of the Dodd-Frank Act (sections 619 – 621) provide a framework for significantly restricting high-risk proprietary trading by banks and systemically important non-bank financial institutions. If successfully implemented, these restrictions can reduce the likelihood of future tax payer bail-outs of financial firms and help re-focus large complex financial institutions away from shorter-term more speculative investments and toward longer-term and more socially productive activities. Rule implementation and analyses by the regulatory authorities over the next six to fifteen months will be critical in determining whether these provisions will achieve these goals, or whether they will create so many delays, loopholes, exemptions and enforcement lapses as to render these provisions ineffective or worse. Most importantly, the regulatory and implementation decisions taken in these next months will signal whether the regulatory authorities are serious about implementing effective Merkley-Levin provisions or not. A major challenge will be to establish rules that will prevent the many exemptions currently present in the Act from undermining the clear spirit of the provisions which are designed to significantly restrict high-risk proprietary trading. To signal their intention to implement seriously the provisions, the authorities must: 1) Place front and center the clear, overriding mandates they have to define and prohibit proprietary trading, even in exempted areas, if such activities involve "conflicts of interest," would result in "material exposure" of banks to "high-risk assets" or "trading strategies," or would "pose a threat" to the "safety and soundness" or the "financial stability of the United States" 2) Take very seriously the requirement to establish special capital charges and other quantitative limits, including charges that increase with leverage on those activities that they do not or cannot prohibit 3) Establish definitions, metrics, data gathering requirements, enforcement monitoring mechanisms and public transparency procedures that minimize the opportunities for evasion that might otherwise result from the many exemptions allowed for in the provisions 4) Recognize that the added complexity resulting from multiple exemptions, as well as the comprehensive studies that the provisions demand, require the regulators to collect, process, and utilize extensive micro-level data on assets, liabilities, trades, embedded leverage and strategies, including for hedge and private equity funds in which banks have investments and 5) Consider that while the Act permits multiple and lengthy extensions on implementation, these should only be granted when absolutely necessary, and after open public discussion of the justification for such extensions. The objectives of the Merkley-Levin provisions are too important for the health of our financial system and of the institutions that make it up, for there to be arbitrary, unnecessary or self-serving delays in the application of the rules.

SAFER
ECONOMISTS' COMMITTEE FOR STABLE, ACCOUNTABLE, FAIR AND EFFICIENT FINANCIAL REFORM
A PROJECT OF THE POLITICAL ECONOMY RESEARCH INSTITUTE ■ UNIVERSITY OF MASSACHUSETTS, AMHERST

Introduction

The so-called “Volcker Rule” is contained in sections 619, 620 and 621 of the Dodd-Frank Act.[1]. According to Senators Merkley and Levin, the Congressional authors of these provisions, these rules are designed to do three main things: 1) Prohibit high risk proprietary trading at banks 2) Limit the systemic risk of such activities at systemically significant nonbank financial companies, and 3) Prohibit material conflicts of interest in asset-backed securitizations. (Merkley and Levin, *Congressional Record*, July 15, 2010, S5894 (Merkley and Levin, (ML, 2010a.)

Appropriate, forceful implementation of these provisions is crucial for helping to avoid future economic crisis. Indeed, risky proprietary investments by investment banks, along with trading for clients whose decisions were influenced by these banks, was one of the main forces that sustained upward pressure on security prices in the bubble. Indeed, by running large trading books, banks had inside information on client trading patterns and could use that information to front-run, and thereby help sustain market trends. Banks maintain large inventories of the securities ostensibly to facilitate trading, but these inventories in fact include substantial quantities of proprietary investments hidden within market-maker inventories. *By 2008, bank trading books held hundreds of billions of disguised proprietary investments*. By mid-April of 2008, banks had lost roughly $230 billion dollars on their super-senior CDO proprietary holdings that regulators and other interested parties believed were simply inventories of assets held to facilitate client trading (Tett, 2008). These losses were probably created from about three quarters of a trillion dollars worth of risky assets. Clearly, proprietary trading was a major cause of the recent crisis. (Crotty, Epstein, Levina, 2010).

By limiting high risk proprietary trading and conflicts of interest by banks and systemically significant non-bank financial institutions, the intent of the legislation is to contribute to several broader goals: 1) Reduce government subsidies for socially dangerous, high risk trading resulting from the existence of government subsidies and guarantees that flow to U.S. banks and “systemically significant” non-bank financial companies 2) Reduce the likelihood of government bail-outs of “too big to fail” financial institutions by limiting the risky bets they are allowed to take, as well as make them adequately prepare for losses on the bets they make, and 3) Help shift the focus of large banks and non-bank financial firms from shorter term, risky activities, to longer term, productivity enhancing investments and credit extension that will help generate employment and socially productive investments. (ML, 2010, b).

Identifying and preventing high risky proprietary trading by large, complex financial firms would be challenging under any circumstances because of the complexity of activities undertaken by these institutions, the multiple locations domestically and internationally and within their corporate structures where they are undertaken, and the increasingly complex financial products with which proprietary trading can be conducted and hidden. All of these complexities require a great deal of information about specific trades, positions and investments which may not currently be available to regulators, or even, in some case, to the top management and board of directors of the financial institutions themselves.

But the task has been made more difficult and the data requirements much larger because of multiple exemptions from the general prohibitions created by the legislation and the numerous ambiguities in

the definitions of key concepts and terms in the Act. For example, allowing banks to own significant *de minimis shares* in hedge and private equity funds could make it easier, all things equal, for banks to hide proprietary trading in the deals struck with hedge funds. Section 619 (d)(4). Allowing proprietary trading for "market-making-related activities" (Section 619(d)(1)(B)) and for " risk-mitigating hedging activities" (Section 619(d)(1)(C)) will require clear rules and a great deal of individual trade and position data to ensure that these activities do not hide high-risk proprietary trading.

At the same time, there are some very strong provisions in the Volcker Rule that, if they are highlighted, defined and implemented properly, can help ensure that the rules greatly reduce high risk and socially dangerous activities that banks and other systemically important financial firms would otherwise be likely to engage it.

Four provisions of the act are particularly important in this regard.

a. Conflict of Interest and High Risk trading Strategies

First, the legislation states that, "No transaction, class of transactions, or activity may be deemed…permitted…if it (i) would involve or result in a material conflict of interest…(ii) would result, directly or indirectly in material exposure by the banking entity to high-risk assets or high-risk trading strategies…(iii) would pose a threat to the safety and soundness of such banking entity; or (iv) would pose a threat to the financial stability of the United States." (Frank- Dodd-Frank Act, Section 619(2)((A)(i – iv).) It is crucial that this provision be taken absolutely seriously and play an over-riding role in the rule making and implementation of the provisions, as its language suggests it must. As such, key terms such as "material conflict of interest," and "high-risk trading strategies" need to be defined and measured, and their impacts on the "safety and soundness of the banking entity" and to the "financial stability of the United States" must be the object of careful study.

b. Additional capital requirements and quantitative limitations on permitted activity

Second, even if regulators do not prohibit outright particular transactions or activities, they must nonetheless impose additional capital charges or quantitative limitations on them if they are thought to be excessively risky for the banking entity or non-bank financial firm. This provision in the legislation would allow the regulators to increase capital requirements or place additional limitations on permitted proprietary trading if it is deemed that these activities pose a threat to banking entities or systemically important non-bank financial firms. "The appropriate federal banking agencies….[shall] adopt rules imposing additional capital requirements and quantitative limitations permitted under this section if the appropriate (agencies and commissions)…determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities." Section 619(3). Identifying these capital requirements and specifying other quantitative limitations with respect to permitted activities will be crucial for limiting risky proprietary trading by banks, as well as by non-bank financial firms. The latter may be especially important if some large banks choose to give up their banking charters.

c. Restrictions on Interdependence

Third, the Volcker rule interacts with other restrictions, including restrictions on engaging in credit and derivative contracts with affiliates and with sponsored financial entities. Section 619(1)(f). Rules governing these interactions need to be crafted to minimize high risk interdependencies among financial affiliates and other financial entities.

d. Preparation of a comprehensive and detailed study of the investments and activities of banks

Fourth, Section 620 of the Act requires the relevant banking authorities to prepare a comprehensive and detailed study of the investments and activities of banks. While sections 619 focus on limiting high-risk short term proprietary trading and investments in hedge funds and private equity funds, the study described in section 620 requires the regulators to look at the broader, longer term investment strategies of banks and detailed information on their investments and activities to identify "high risk assets" and "high risk trading strategies" that might be occurring outside of the "trading account," for example in their "investment accounts." Implementing this study and then using it for guidance for possible further rule implementation will be important moving forward to make sure that the Volcker Rule is effectively implemented.

The Tasks Moving Forward

Thus, the tasks moving forward are two-fold: 1) Concretize definitions, identify necessary data, and determine metrics that will minimize the damage created by the many exemptions and possible loopholes potentially present in the provisions in order that the main intent and goals of the Volcker provisions can be effectively implemented; and 2) Ensure that the strong, encompassing provisions discussed above are taken seriously and are given their appropriate place in the hierarchy of rules defined and implemented.

For both sets of rules there are several aspects that will be crucial:

a) defining key terms
b) identifying data needed to implement the rules
c) establishing monitoring and enforcement mechanisms for the rules
d) determining the timing of the implementation of the rules

In this regard, the next six to eighteen months—and especially, the next six to 15 months—will be crucial in the writing and implementation of these rules. It will be important to properly establish the many key definitions, the multiple data gathering requirements, crucial metrics, and essential enforcement mechanisms.

Much more important than these key technical and procedural details will be to set the right tone, to establish an overall commitment on the part of the regulators—as will then be embodied in the myriad decisions that they must make about rules and definitions—to the spirit of the "Volcker Rule" which is designed to strictly limit high-risk trading by financial institutions and their affiliates, to eliminate the possibility that banks will bail out affiliated hedge or private equity funds, to reduce the chances that banks will be tempted though conflicts of interest to exploit their customers, and that, by these means,

GEPSTEIN@ECONS.UMASS.EDU ■ JANE.DARISTA@SNET.NET ■ JTAUB@SOM.UMASS.EDU ■ WWW.PERI.UMASS.EDU/SAFER ■ 413.545.4815
418 NORTH PLEASANT STREET ■ AMHERST, MA 01002

will undermine the financial stability of the US and require more tax-payer bailouts. Indeed, the language in the Volcker Rule provisions *requires the regulators to do just that.* So this regulatory commitment right from the outset, must be implemented.

Key Timeline of the Next Eighteen Months (Dodd-Frank Act; Davis Polk, 2010b, p. 7, 8)

Much critical rule writing and tone setting will occur in the next six to fifteen months.

Within 6 Months

i. The Financial Services Oversight Council (FSOC) to complete a study of proprietary trading and make recommendations on implementing the provisions of the Rule.

ii. The Federal Reserve must issue rules implementing the initial transition period and potential extension period for proprietary trading.

iii. Limits on Permitted Activities: Regulators must issue rules to limit otherwise permitted activities upon a finding that such activities would involve material conflicts of interest, exposure to high-risk trading strategies, or pose a threat to the banking entity or to U.S. financial stability. A similar requirement holds with respect to the insurance provisions in the Act Section 619(d)(F)(ii)

iv. Capital and Quantitative Limits on Permitted Proprietary Trading: If regulators determine that additional capital requirements and quantitative limits, including diversification requirements, are "appropriate" to protect the safety and soundness of banking entities or "systemically important" nonbank financial companies engaged in permitted proprietary trading, they must adopt rules imposing such additional requirements and limitations on the permissible categories of proprietary trading.

(Note that these capital and quantitative limits are very important to define with respect to: proprietary trading of non-bank financial companies Section 619(1)(a)(2) and with respect to capital charges facing banks and non-bank financial companies with *de minimis* investments in hedge funds and private equity funds, which should deducted from the assets and tangible equity of the banking entity and the deduction "shall increase commensurate with the leverage of the hedge fund or private equity fund" Section 619(4)(b)(iii).)

v. The appropriate Federal Banking agencies and other regulators, should issue regulations regarding internal controls and recordkeeping in order to insure compliance with the *de minimis investment* provisions Section 619(4)(e)(1).

Within 9 Months

i. The Securities and Exchange Commission must issue rules for implementing Section 621 which calls for ending conflicts of interest in the issuing of asset backed securities.

GEPSTEIN@ECONS.UMASS.EDU ■ JANE.DARISTA@SNET.NET ■ JTAUB@SOM.UMASS.EDU ■ WWW.PERI.UMASS.EDU/SAFER ■ 413.545.4815
418 NORTH PLEASANT STREET ■ AMHERST, MA 01002

Within 15 months (9 months after the Council's Study)

i. Each of the regulators must consider the findings of the Council Study and adopt rules to carry out the Volcker rule.

ii. Additional Capital Standards and restrictions During Transition Period: Regulators must issue rules to impose additional capital and other restrictions, as appropriate, on sponsoring or investing in hedge funds or private equity funds by a banking entity *during the transition period.*

Within 18 months

i. The appropriate Federal banking and regulatory agencies must prepare the comprehensive report on banking assets and strategies to consider and make recommendations concerning:

(1) Whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States Financial System.

(2) The appropriateness of the conduct of each activity or type of investment by banking entities

(3) Additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments engaged in by these banks.

Definitions, Data and Metrics

Task 1: Preventing Exemptions from Becoming Evasion Mechanisms

While the Volcker Rules leave plenty of opportunity to define terms and impose procedures that will implement the spirit of the provisions, they also leave opportunities to weaken the rules and enforcement. So it is crucial that the rule making and implementation procedures guard against this danger by insisting on interpretations of rules with a clear intention to eliminate high risk proprietary trading and conflicts of interest with respect to proprietary trading and asset backed securities.

The Merkley-Levin provisions are designed 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." (ML, 2010A, S5894). Here it will be necessary to: 1) define proprietary trading and gather data appropriate to measuring it, and 2) to determine and define the appropriate capital requirements and quantitative limits for these transactions particularly in the case of non-bank, systemically significant financial firms.

a. Defining Proprietary Trading and Interpreting the "trading account"

"[P]roprietary trading means 'engaging as a principal for the trading account' in transaction to 'purchase or sell, or otherwise acquire or dispose of' a wide range of traded financial products…there are essentially three key elements to the definition: (1) the firm must be acting 'as a principal for the trading account' (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." (M-L, ibid., p. S5895).

"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." (ibid., S5895). 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." …"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" (ibid. p. S5895). So this should be defined by the regulators.

b. Defining and clarifying "permitted activities" in 619 (d)

There are several key permitted activities that must be defined carefully and measured properly: Section 619(1)(d)(B) allows trading in "connection with underwriting or market-making-related activities," "to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties."

Thus it is crucial to define and develop metrics to measure "market-making-related activities" and to define and develop metrics to measure "reasonably expected near term demands of clients, customers or counterparties" as well as "risk mitigating activities."

i. Rule-making must define the critical elements that should be satisfied for trading to qualify as "market-making related activities":

> a. Two-sided markets: "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." (M-L, 2010a)
>
> b. Revenues based on these trades should come primarily from bid-ask spreads and the provision of credit and not from capital gains earned on the change of prices of the assets. So, in order to qualify for this exemption, the banks should have to provide data on the acquisition and sales price of the assets, and the sources of revenue (fees, bid-ask spreads, interest rates, charged, etc.) (ibid). If a firm writes derivatives contracts, then such activities should be either (1) held in the long term investment portfolio or (2) traded away. Hedging such positions, while keeping them in the trading accounts of the firm, is not an option.
>
> c. The usefulness of other metrics for gauging whether such trading is for market-making or for speculative purposes should be investigated. Academic literature sets out the distinctions between making markets for customers and holding speculative position 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.

ii. "Reasonably expected near term demands of clients, customers and counterparties" creates two restrictions:

a. One is on the expected holding period of the assets or positions. Metrics for determining the holding period, such as a dated inventory approach, or other measures must be determined.

b. The other is the intent. In this regard, revenue should result primarily from fees charged and not from price changes from holding the assets and positions.

iii. Risk Mitigating Activities

Subparagraph (d)(1)(c) permits a banking entity to engage in "risk-mitigating hedging activities in connection with and related to individual or aggregative 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. To implement this role data must be provided to ensure that the hedges apply to specific, identifiable assets, whether it be on an individual or aggregate basis. This language is designed to prevent general macro hedges that are really designed to be open bets, rather than positions taken to hedge specific owned assets or incurred risks. This formulation is meant to focus banking entities on traditional hedges and prevent proprietary speculation under the guise of general "hedging." (ML, 2010a).

c. Limiting Evasion and Risk associated with Sponsorship of Hedge and Private Equity Funds

Subparagraph (d)(1)(G) permits firms to organize and offer hedge funds or private equity funds as an asset management service to clients.

The Merkley-Levin provisions generally prohibit insured depository institutions and their affiliates from "sponsoring" a hedge fund or private equity fund, and imposes extra capital charges and quantitative limits on systemically important non-bank financial firms for doing the same (though it would not prohibit banking organizations from providing advice to such funds). Section 619(1)(a)(B), Section 619(a)(2). This provision is designed to prevent banks from using their relations with hedge and equity funds from evading the prohibitions on proprietary trading, as well as to eliminate the possibility that banks will be put in the position, as they were during the recent crisis, of "bailing out" their associated hedge and private equity funds, which in turn placed the banks at risk and contributed to taxpayer bail-outs.

The Act created significant exceptions to these rules. In particular, it allows *"de minimus investments"* in hedge funds and private equity funds, with important restrictions. Section 619(4). These restrictions must be carefully defined in the rule making process and it is crucial that data and metrics be devised and monitoring systems be put in place to make sure that these exceptions do not place banking entities at risk or provide major loopholes for risky proprietary trading.

The amount of *de minimus* investment should be "immaterial" to the bank and, in any case, at most 3% of each fund and, in the aggregate can constitute at most 3% of the banks' Tier I capital following an initial period when banks could temporarily "seed" up to 100% of the capital of the fund. These are intended to be seed capital in order to attract outside capital and not as proprietary investments themselves. Rules should be issued that make clear that these initial investments should not be seen as proprietary investments for the banks themselves, and that large initial investments in funds by banks are prima facie evidence that these are attempts at evasion of the Merkley-Levin provisions.

Furthermore, the rules require that when investments in funds are made, there is a no-bailout pledge from the bank, so it is clear that banks will not come to the rescue of these funds and place their bank (and taxpayers) in jeopardy.

Finally, the Act calls for significant capital charges for all investments in funds and these rules should be strictly written and mechanisms should be set up to make sure that appropriate data are collected in a timely fashion and these capital charge rules are strictly enforced. The Act states that "For purposes of determining compliance with applicable capital standards…the aggregate amount of outstanding investments by a banking entity….including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund and private equity fund." (Section 619(4)(B)(iii).

It is clear from the foregoing that in order to implement this provision, the regulators must collect detailed information from all hedge funds and private equity funds in which banking entities have de minimis investments. For only by having detailed information on the funds can the regulators know the degree of leverage in the fund, including embedded leverage in financial instruments, in order to give them the information they need to establish increased capital charges in the case of highly leveraged funds. It is crucial that these considerations inform the "internal controls and recordkeeping, in order to insure compliance" with these rules Section 619(4)(e)(1).

Task 2: Defining and Implementing Limitations on Permitted Activities

As mentioned earlier, despite the exemptions contained in the Act, section (2) of Section 619 specifies that no "transaction class of transactions or activity may be deemed a permitted activity" if it involves a conflict of interest, would involve a material exposure to high risk assets or strategies, or would threaten the financial stability of the bank or the United States. This section must be placed front and center and all the possible exemptions must be carefully analyzed to make sure that they do not violate this provision.

Other considerations

Data Requirements

It is clear that to properly define and implement these rules, a great deal of data on individual positions, securities and trades will be required. (This is the trade-off paid by those seeking exemptions: in order to make sure the exemptions are not vehicles for evasion, they will have to provide more data.)

a. Trade details for each principal transaction, including prices, bid/ask spreads, commission information. Note that this could be done in automated fashion for swaps through swap repositories, and through other instruments using similar mechanisms. For example, FINRA automatically screens equities trading for insider trading.

b. The dates and maturities of assets held.

c. Sufficient data to readily connect each hedge to particular risks incurred by the banking entity, i.e., each position that is hedged should be noted and connected to the hedge itself.

d. Extensive data on the hedge funds and private equity funds in which the banking entities invest, and particularly the degree of leverage of those funds, the strategies employed, the ownership interests, and the types of transactions between the funds and the banking entities.

e. Data and analysis of "high-risk" assets and trading strategies and their impact on financial stability of the banking institutions and of the overall economy

Timing and Extensions

It is critical that the Federal Reserve and relevant regulatory agencies issue transparent rules and transparent mechanisms for determining the timing of compliance and implementation of the Merkley-Levin provisions. This is very important because the provisions allow multiple extensions for compliance with the various rules. In some cases, banks may be able to extend their compliance for twelve years or more (Davis Polk, 2010b). By what criteria will these extensions be granted? Will there be opportunity for public commentary and input before extensions are granted? These decisions should be rule bound and transparent since the financial stability of the economy might be at stake.

Conclusion

There are many other details to be determined in this highly complex set of provisions. The three major points that apply to all the Merkley-Levin provisions and associated rule making are these:

1. The regulators must signal their determination to establish rules, data gathering and monitoring mechanisms that will implement the clear over-riding intention of the act to prohibit high risk proprie-

tary trading, which suggests that, they should "err" on the side of strict interpretations and rigorous monitoring.

2. The multiple exemptions granted to financial firms and resulting complexity of the provisions demand that there be extensive and detailed data gathering from banking entities and funds with banking investments so that the appropriate metrics can be determined and so that compliance with the rules can be enforced. The regulatory agencies must not shy away from the necessity of gathering and utilizing these data.

3. The exemptions and complexity created by them also imply the need for extensive transparency in rule making and enforcement so that the public can be assured that the acts provisions are being appropriately implemented and complied with.

The next six to eighteen months will set the tone for all that follows in the establishment of the Merkley-Levin provisions. We look forward to working with the appropriate regulators to ensure that these provisions are properly implemented to contributed to greater financial stability and fewer tax-payer funded financial rescues.

References

Senators Jeffrey Merkley and Carl Levin, 2010a. "The Volcker Rule", *Congressional Record*, July 15, S5893 – S5899.

Senators Jeffrey Merkley and Carl Levin, 2010b. "Implementation of Merkley-Levin Provisions", letter to Regulators, August 3, 2010.

Citi Investment & Research Analysis. 2010a. "US Financials: Regulatory Reform Update". June 16.

Citi Investment & Research Analysis. 2010b. "US Financials: Regulatory Reform Update II". June 27.

Crotty, James, Gerald Epstein and Iren Levina. 2010. "Proprietary Trading is a Bigger Deal Than Many Bankers and Pundits Claim", SAFER Policy Brief, #20, http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/SAFERbriefs/SAFER_issue_brief20.pdf .

Davis Polk & Wardwell. 2010a. "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Passed by the House of Representatives on June 30, 2010." July 9.

Davis Polk & Wardwell. 2010b. "Regulatory Implementation Slides"

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). 2010.

Goldman Sachs. 2010. "United States: Financial Services; The Debate is Largely Over, but many Details Still to Come". June 28, 2010.

Silber, William. 2003. "Do Speculators Leave Footprints?", *Journal of Portfolio Management*, Vol. 29, No. 4, pp. 64 – 70.

Skadden Arps. 2010. "The Dodd-Frank Act; Commentary and Insights".

Tett, Gillian. 2008. "Super-Senior CDO investors flex their muscles," *Financial Times,* April 14.

I am very grateful to Jessica Carrick-Hagenbarth, Jane D'Arista, James Crotty, Lisa Donner, Andrew Green, Iren Levina, and Jennifer Taub for many helpful discussions and much assistance. Of course, only I am responsible for errors.

[1] The actual language in the Act was drafted by Senators Merkley and Levin and so we will use the terms "Volcker Rules" and "Merkley-Levin provisions" interchangeably.