

Congress of the United States
Washington, DC 20515

October 21, 2019

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street, S.W.
Washington, DC 20219

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
17th Street, N.W.
Washington, DC 20429

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

The Honorable Heath Tarbert
Chairman
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Dear Comptroller Otting, Chairman Powell, Chairman McWilliams, Chairman Clayton, and Chairman Tarbert:

We write to express our concern and disappointment with the amendments to the Volcker Rule implemented pursuant to Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act)¹ recently adopted by your agencies.

Section 619 is a cornerstone of the Wall Street Reform Act that Congress enacted in the wake of the financial crisis to prohibit taxpayer-backed banks from risky proprietary trading and from owning private equity and hedge funds. These latest amendments (2019 rule)² to the Volcker Rule open the door to the very risky, speculative activities that Congress sought to prohibit.

Numerous aspects of the 2019 rule are problematic. Broadly, it appears that all of the amendments to the original Volcker Rule finalized in December 2013 (2013 rule)³ would permit more proprietary trading by banks or result in less information provided to your agencies. Among the rollbacks in the 2019 rule that alarm us are the: narrowing the definition of “trading account,” including by weakening the short-term intent prong; eliminating metrics reporting;

¹ Pub. L. 111-203.

² Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, <https://www.fdic.gov/news/board/2019/2019-08-20-notice-dis-a-fr.pdf> [hereinafter 2019 rule].

³ Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 79 Fed. Reg. 5,536 (Jan. 31, 2014), <https://www.federalregister.gov/documents/2014/01/31/2013-31511/prohibitions-and-restrictions-on-proprietary-trading-and-certain-interests-in-and-relationships-with>.

removing activity restrictions on non-U.S. banks; and expanding permitted activity related to covered funds.

The 2019 rule changes the definition of “trading account” and illustrates the deregulatory approach taken by your agencies. As you know, the Volcker Rule prohibits proprietary trading by banking entities by limiting their ability to act as principal, using their own funds, for their “trading account,” which means any account comprising trading positions that have been taken principally for the purpose of selling in the near term. The 2013 rule put substance over form to capture positions regardless of how they are reported on banks’ balance sheets.

Unfortunately, the 2019 rule upends this restriction by limiting the “trading account” to include only those positions that are reported on banks’ balance sheets as trading assets or liabilities. This significantly reduces the scope of the Volcker Rule.

As FDIC Director Marty Gruenberg explained in his dissenting statement, at the holding company level, the 2019 rule would capture \$1.8 trillion in financial instruments, instead of \$2.4 trillion under the 2013 rule—a 25 percent reduction. He further noted that at the bank level the 2019 rule would capture only \$635 billion of financial instruments, excluding about 46 percent of the financial instruments the 2013 rule would have captured.⁴

There will be less transparency regarding banking activities under the 2019 rule by the elimination of significant reporting and record keeping requirements. As stated in the 2019 rule, “the revised metrics in the final rule would result in a 67 percent reduction in the number of data items and approximately 94 percent reduction in the total volume of data,”⁵ compared to the 2013 rule. We find your stated justification that the remaining reporting requirements are “generally useful” to demonstrate compliance and “do not pose a special calculation burden” to be insufficient explanations for the significant reductions in required information.⁶

This is the type of information that Members of Congress have repeatedly requested your agencies publish in order to provide transparency to policymakers and market participants.⁷ While we appreciate that you will “continue to consider whether some or all of the quantitative measurements should be publicly disclosed,”⁸ we believe reducing the required data diminishes

⁴ Statement by Martin J. Gruenberg, Member, FDIC Board of Directors, The Volcker Rule (Aug. 20, 2019) at 2, <https://www.fdic.gov/news/news/speeches/spaug2019b.pdf>.

⁵ 2019 rule, at 206.

⁶ *Id.*

⁷ Letter from Senators Jeffrey A. Merkley, Sherrod Brown, and Elizabeth Warren to The Honorable Joseph M. Otting, Comptroller, Office of the Comptroller of the Currency, The Honorable Jerome H. Powell, Chairman, Board of Governor of the Federal Reserve System, The Honorable Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation, The Honorable Jay Clayton, Chairman, Securities and Exchange Commission, and The Honorable Christopher Giancarlo, Chairman, Commodity Futures Trading Commission (July 30, 2018) ([https://www.merkley.senate.gov/imo/media/doc/18.07.30%20SL%20Financial%20Regulators%20Volcker%20Metrics%20Merkley%20Brown%20Warren%20\(002\).pdf](https://www.merkley.senate.gov/imo/media/doc/18.07.30%20SL%20Financial%20Regulators%20Volcker%20Metrics%20Merkley%20Brown%20Warren%20(002).pdf)); Letter from Representative Carolyn Maloney to The Honorable Janet Yellen, Chair, Board of Governor of the Federal Reserve System, The Honorable Thomas Curry, Comptroller, Office of the Comptroller of the Currency, The Honorable Martin Gruenberg, Chairman, Federal Deposit Insurance Corporation, The Honorable Mary Jo White, Chair, Securities and Exchange Commission, and The Honorable Timothy Massad, Chairman, Commodity Futures Trading Commission (Aug. 29, 2016) (<https://maloney.house.gov/media-center/press-releases/rep-maloney-asks-financial-regulators-for-volcker-rule-data-update>).

⁸ 2019 rule, at 212.

its usefulness. In any case, publishing that data, even on a delayed basis without any confidential information, is necessary for proper oversight by Congress.

Overall, the changes in the 2019 rule are contrary to the statutory purpose of Section 619 of the Wall Street Reform Act to prohibit proprietary trading by banking entities. As former Federal Reserve Chairman and the original proponent of the rule, Paul Volcker noted in his recent letter to Chair Powell, the U.S. is enjoying its longest economic expansion, banks are spending their profits on dividends and share buybacks, loan growth exceeds nominal GDP growth and the unemployment rate is at 50-year lows. In concluding, he added, “[t]hese facts belie any justification for the new rule. It bolsters the views of skeptics who believe that the ‘simplification’ effort was merely a ploy to weaken the core elements of reform.”⁹

We agree. In short, the 2019 rule is simply a giveaway to Wall Street banks that puts taxpayer-backed banks at risk. We believe the changes to the Volcker Rule and other regulatory changes proposed and implemented by your agencies threaten the stability of the financial system.¹⁰

So that we may better understand and respond to the potential risks of the exemptions and exclusions in the 2019 rule to taxpayers and the U.S. economy, please respond to the following by October 25, 2019.

1. Please provide the data and metrics, including the quantitative metrics required under the 2013 rule, that you considered in your analysis.¹¹
2. Please explain what you learned from that data to justify eliminating or reducing the information and data reported by banking entities. In particular, please highlight:
 - a. the metrics that you determined were unnecessary and the reporting metrics under the 2019 rule that would provide comparable information;
 - b. the metrics that support establishing the revised reporting thresholds (e.g., setting the \$20 billion level for banking entities with significant trading assets and liabilities);
 - c. how you determined that the reduced data collected under the 2019 rule will not impact any response to or analysis of a potential financial crisis; and
 - d. how you measured the increase in resolution costs for a banking entity as a result of gathering less data.

Finally, you stated that you intend to rewrite additional aspects of the 2013 rule relating to covered funds in a subsequent rulemaking. We are concerned that those revisions will permit additional investments in speculative hedge funds and other vehicles that will increase risks to banks and the financial system.

⁹ Letter from Paul Volcker to The Honorable Jerome Powell, Chairman, Board of Governor of the Federal Reserve System (Aug. 20, 2019).

¹⁰ Letter from Representative Maxine Waters and Senator Sherrod Brown to The Honorable Jerome Powell, Chairman, Board of Governor of the Federal Reserve System, The Honorable Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation, and The Honorable Joseph Otting, Comptroller, Office of the Comptroller of the Currency (July 31, 2019) https://financialservices.house.gov/uploadedfiles/07.31.2019-ltr_to_fed_fdic_occ_swaps.pdf.

¹¹ If necessary, you may protect any confidential or proprietary data in your response.

Accordingly, we urge you to reconsider your decision to adopt the 2019 amendments and any further amendments to the Volcker Rule that permit banks, backed by U.S. taxpayers, to once again engage in risky trading and investment activity.

Thank you for your attention to this matter.

Sincerely,



Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
U.S. Senate



Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives