United States Senate
WASHINGTON, DC 20510

July 30, 2018

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

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

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

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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

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

In response to the financial crisis, Congress in 2010 passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform). With the Merkley-Levin Amendment, the law included the "Volcker Rule," a prohibition on banks engaging in some of the risky trading activities and fund investments that exacerbated significant weaknesses in the banking system and required unprecedented bailouts of the financial sector.[1]

Repeated delays have slowed the implementation and enforcement of the law. Just as troubling, though, is the limited transparency into the data and metrics used by the federal financial regulators in order to understand if the provision has been effective at obtaining the change that Congress intended.

While many large global banks covered by the Volcker Rule have shed their standalone proprietary trading desks,[2] federal financial regulators must examine financial institutions for

[1] The law prohibits banks, bank holding companies, and their affiliates and subsidiaries from such activities, and also limits those activities at systemically significant nonbank financial institutions.

[2] See, for example, Moyer, Liz. "Investment Banks Move to Dodge Volcker Rule." *Forbes*, August 4, 2010. Available at: https://www.forbes.com/sites/streettalk/2010/08/04/investment-banks-move-to-dodge-volcker-rule/#796de9a0780f; Baer, Justin. "Morgan Stanley to Spin Off Prop Trading Desk." *Financial Times*, January 10, 2011. Available at: https://www.ft.com/content/6c285214-1cfc-11e0-8c86-00144feab49a; and Miller, Don. "JPMorgan Shuts Down Prop Trading Unit as Banks Maneuver Around the Volcker Rule." *SeekingAlpha.com*, September 3, 2010. Available at: https://seekingalpha.com/article/223675-jpmorgan-shuts-prop-trading-unit-as-banks-maneuver-around-the-volcker-rule.

Volcker Rule compliance. Your agencies should share with Congress and the public your data and metrics demonstrating the impact of the Volcker Rule on banks' activities.[3]

While financial institutions may argue that disclosing such data and metrics would reveal confidential information, there are undoubtedly multiple ways to avoid any such problems, including delaying the release of the data, withholding the name of the institution at which the trading desk is located, or aggregating data in such a way as to address confidentiality concerns. Your agencies have acknowledged that since at least May 2017 that they have been "considering whether, and if so how, metrics information should be published, consistent with safeguarding confidential information and preserving the usefulness of the information."[4] The agencies have had ample time to devise ways to safeguard confidential information; the time has come to effectuate these changes, particularly given the public's need to understand the impact of the Volcker Rule in light of the agencies' proposed changes.

Exacerbating the problem around data and metrics transparency is a lack of specifics on how your agencies are examining, supervising, and enforcing for Volcker Rule compliance, how data is being shared between your agencies, and the penalties for violations. Without such transparency, accountability is almost certainly impossible, and the American people will continue to doubt that meaningful financial reform is occurring.

Releasing these data and metrics would be in the public interest. Bank counterparties and customers would benefit from greater transparency regarding how the ban on proprietary trading and fund investments is being enforced. Customers could have greater confidence that dealers were facilitating market-making rather than betting against them, and emergent firms could better understand opportunities to compete against established dealer banks. Finally, banks themselves would also have a better, more reliable understanding of what trading and fund investment activities are permitted in practice.

Now that the agencies are proposing changes to the Volcker Rule, it is worth noting that the Notice of Proposed Ruling (NPR) is devoid of any data or analysis that provides support to many of the significant policy changes included in the NPR. Indeed, many of the more than 1,000 questions posed in the NPR are not readily answerable without access to Appendix A data, except perhaps by the banking industry itself.

To that end, we respectfully but urgently request that you share with Congress quantitative data and metrics demonstrating banks' activities under the Volcker Rule, along with the agencies' standards used to demonstrate compliance, the penalties for non-compliance, and banks' success or failure at achieving compliance. This should include the seven factors that banks are required to report to the agencies for each trading desk,[5] along with a description of how frequently examiners at the agencies have used the quantitative metrics to date, including how metrics are used to evaluate compliance with the Volcker Rule.

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[3] See letter from Americans for Financial Reform dated December 17, 2015

[4] Correspondence from the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Commodity Futures Trading Commission to Senator Merkley dated May 4, 2017.

[5] *See* the factors at 12 C.F.R. 248, Appendix A, including: (1) risk and position limits and usage; (2) risk factor sensitivities; (3) value-at-risk (VaR) and stress VaR; (4) comprehensive profit and loss attribution; (5) inventory turnover; (6) inventory aging; and (7) customer-facing trade ratios.

Please provide us with this information by August 6, 2018. It is critical that this information and data is publicly available before the end of comment period. Congress intended for the Volcker Rule to function as a modern-day Glass-Steagall Act, acting as a firewall to safeguard traditional loan-making and deposit-taking at banks from high-risk bets that put customers and the financial system at risk. Congress and the public deserve to be able to evaluate it.

Sincerely,

Jeffrey A. Merkley
United States Senator

Sherrod Brown
United States Senator

Elizabeth Warren
United States Senator