

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To prohibit certain forms of proprietary trading,  
and for other purposes.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**

**S. 3217**

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MERKLEY (for  
himself and Mr. LEVIN)

Viz:

- 1 On page 484, strike line 16 and all that follows
- 2 through page 497, line 8, and insert the following:

1 **SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND**  
2 **CERTAIN RELATIONSHIPS WITH HEDGE**  
3 **FUNDS AND PRIVATE EQUITY FUNDS.**

4 The Bank Holding Company Act of 1956 (12 U.S.C.  
5 1841 et seq.) is amended by adding at the end the fol-  
6 lowing:

7 **“SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND**  
8 **CERTAIN RELATIONSHIPS WITH HEDGE**  
9 **FUNDS AND PRIVATE EQUITY FUNDS.**

10 “(a) IN GENERAL.—

11 “(1) PROHIBITION.—Unless otherwise provided  
12 in this section, a banking entity shall not—

13 “(A) engage in proprietary trading; or

14 “(B) acquire or retain any equity, partner-  
15 ship, or other ownership interest in or sponsor  
16 a hedge fund or a private equity fund.

17 “(2) NONBANK FINANCIAL COMPANIES.—Any  
18 nonbank financial company supervised by the Board  
19 that engages in proprietary trading or takes or re-  
20 tains any equity, partnership, or other ownership in-  
21 terest in or sponsors a hedge fund or a private eq-  
22 uity fund shall be subject by the Board, in consulta-  
23 tion with the Securities and Exchange Commission  
24 and the Commodity Futures Trading Commission,  
25 to additional capital requirements for and additional  
26 quantitative limits with regards to such proprietary

1 trading and taking or retaining any equity, partner-  
2 ship, or other ownership interest in or sponsorship  
3 of a hedge fund or a private equity fund, except that  
4 permitted activities as described in subsection (d)  
5 shall be subject to additional capital and additional  
6 quantitative limits as prescribed pursuant to sub-  
7 section (d)(3).

8 “(b) STUDY AND RULEMAKING.—

9 “(1) STUDY.—

10 “(A) IN GENERAL.—Not later than 6  
11 months after the date of enactment of this sec-  
12 tion, the Financial Stability Oversight Council  
13 shall study and make recommendations on im-  
14 plementing the provisions of this section.

15 “(B) CONTENTS OF STUDY.—Not later  
16 than 6 months after the date of enactment of  
17 this Act, the Council shall study and make rec-  
18 ommendations on implementing the provisions  
19 of this section so as to—

20 “(i) promote and enhance the safety  
21 and soundness of banking entities;

22 “(ii) protect taxpayers and enhance fi-  
23 nancial stability by minimizing the risk  
24 that depository institutions and the affili-

1           ates of depository institutions will engage  
2           in unsafe and unsound activities;

3           “(iii) limit the inappropriate transfer  
4           of Federal subsidies from institutions that  
5           benefit from deposit insurance and liquid-  
6           ity facilities of the Federal Government to  
7           unregulated entities;

8           “(iv) reduce conflicts of interest be-  
9           tween the self-interest of banking entities  
10          and nonbank financial companies, and the  
11          interests of the customers of such entities  
12          and companies;

13          “(v) not unreasonably raise the cost of  
14          credit or other financial services, reduce  
15          the availability of credit or other financial  
16          services, or impose other costs on house-  
17          holds and businesses in the United States;

18          “(vi) limit activities that have caused  
19          undue risk or loss in banking entities and  
20          nonbank financial companies, or that  
21          might reasonably be expected to create  
22          undue risk or loss in such banking entities  
23          and nonbank financial companies; and

24          “(vii) appropriately accommodate the  
25          business of insurance within an insurance

1           company subject to regulation in accord-  
2           ance with the relevant insurance company  
3           investment laws while protecting the safety  
4           and soundness of an affiliated insured de-  
5           pository institution and the United States  
6           financial system.

7           “(2) RULEMAKING.—

8           “(A) IN GENERAL.—Not later than 9  
9           months after the completion of the study under  
10          paragraph (1), the appropriate Federal banking  
11          agencies, in consultation with the Securities and  
12          Exchange Commission and the Commodity Fu-  
13          tures Trading Commission, (unless otherwise  
14          provided in this section) shall consider the find-  
15          ings of the study under paragraph (1) and  
16          adopt rules to carry out this section.

17          “(B) COORDINATED RULEMAKING.—

18          “(i) COORDINATION, CONSISTENCY,  
19          AND COMPARABILITY.—In developing and  
20          issuing regulations pursuant to this sec-  
21          tion, the agencies shall consult and coordi-  
22          nate with each other for the purposes of  
23          assuring, to the extent possible, that such  
24          regulations are comparable and provide for  
25          consistent application and implementation

1 of the applicable provisions of this section  
2 to avoid providing advantages or imposing  
3 disadvantages to the companies affected by  
4 this subsection and to protect the safety  
5 and soundness of the banking entities and  
6 nonbank financial companies supervised by  
7 the Board.

8 “(ii) COUNCIL ROLE.—The chair-  
9 person of the Council shall be responsible  
10 for coordination of the regulations issued  
11 under this section.

12 “(c) EFFECTIVE DATE.—The provisions of this sec-  
13 tion shall take effect 18 months after the date of adoption  
14 of final rules under subsection (b)(2), but not later than  
15 3 years after the date of enactment of this section.

16 “(d) PERMITTED ACTIVITIES.—

17 “(1) IN GENERAL.—Notwithstanding the re-  
18 strictions in subsection (a), to the extent permitted  
19 by other laws or regulations, and subject to the limi-  
20 tations under paragraph (2) and any restrictions or  
21 limitations that the appropriate Federal banking  
22 agencies, in consultation with the Securities and Ex-  
23 change Commission and the Commodity Futures  
24 Trading Commission, may jointly determine, the fol-

1       lowing activities (in this section referred to as ‘per-  
2       mitted activities’) are permitted:

3               “(A) The purchase, sale, acquisition, or  
4       disposition of obligations of the United States  
5       or any agency thereof; obligations, participa-  
6       tions, or other instruments of or issued by the  
7       Government National Mortgage Association, the  
8       Federal National Mortgage Association, the  
9       Federal Home Loan Mortgage Corporation, a  
10      Federal Home Loan Bank, the Federal Agricul-  
11     tural Mortgage Corporation, or a Farm Credit  
12     System institution chartered under and subject  
13     to the provisions of the Farm Credit Act of  
14     1971 (12 U.S.C. 2001 et. seq.), and obligations  
15     of any State or of any political subdivision  
16     thereof.

17              “(B) The purchase, sale, acquisition, or  
18      disposition of securities and other instruments  
19      described in subsection (i)(4) in connection with  
20      underwriting, market-making, or in facilitation  
21      of customer relationships, to the extent that  
22      any such activities permitted by this subpara-  
23      graph are designed to not exceed the reasonably  
24      expected near term demands of clients, cus-  
25      tomers, or counterparties.





1           pany investment laws, regulations, and  
2           written guidance of the State or jurisdic-  
3           tion in which each such insurance company  
4           is domiciled; and

5                   “(ii) the appropriate Federal banking  
6           agencies, after consultation with the Fi-  
7           nancial Stability Oversight Council and the  
8           relevant insurance commissioners of the  
9           States and territories of the United States,  
10          have not jointly determined, after notice  
11          and comment, that a particular law, regu-  
12          lation, or written guidance described in  
13          clause (i) is insufficient to protect the safe-  
14          ty and soundness of the company or the  
15          banking entity or the financial stability of  
16          the United States.

17                   “(G) Proprietary trading conducted by a  
18          company pursuant to paragraph (9) or (13) of  
19          section 4(c), provided that the trading occurs  
20          solely outside of the United States and that the  
21          company is not directly or indirectly controlled  
22          by a United States person.

23                   “(H) The acquisition or retention of any  
24          equity, partnership, or other ownership interest  
25          in or the sponsorship of a hedge fund or a pri-

1 vate equity fund by a company pursuant to sec-  
2 tion 4(c) (9) or (13) solely outside of the  
3 United States, provided that no ownership in-  
4 terest in the hedge fund or private equity fund  
5 is offered for sale or sold to a resident of the  
6 United States and that the company is not di-  
7 rectly or indirectly controlled by a company that  
8 is organized in the United States.

9 “(I) Such other activity as the appropriate  
10 Federal banking agencies, in consultation with  
11 the Securities and Exchange Commission and  
12 the Commodity Futures Trading Commission,  
13 jointly determine through regulation, as pro-  
14 vided for in subsection (c), would promote and  
15 protect the safety and soundness of the banking  
16 entity or nonbank financial company and the fi-  
17 nancial stability of the United States.

18 “(2) LIMITATION ON PERMITTED ACTIVITIES.—

19 “(A) IN GENERAL.—No transaction, class  
20 of transactions, or activity may be deemed a  
21 permitted activity under paragraph (1) if it—

22 “(i) would involve or result in a mate-  
23 rial conflict of interest (as such term shall  
24 be defined jointly by rule) between the  
25 banking entity or the nonbank financial

1 company and its clients, customers, or  
2 counterparties;

3 “(ii) would result, directly or indi-  
4 rectly, in an unsafe and unsound exposure  
5 by the banking entity or nonbank financial  
6 company to high-risk assets or high-risk  
7 trading strategies (as such terms shall be  
8 defined jointly by rule);

9 “(iii) would pose a threat to the safety  
10 and soundness of such banking entity or  
11 nonbank financial company; or

12 “(iv) would pose a threat to the finan-  
13 cial stability of the United States.

14 “(B) RULEMAKING.—The appropriate  
15 Federal banking agencies, in consultation with  
16 the Securities and Exchange Commission and  
17 the Commodity Futures Trading Commission,  
18 shall issue regulations to implement subpara-  
19 graph (A) as part of the regulations provided  
20 for under subsection (b)(2).

21 “(3) CAPITAL AND QUANTITATIVE LIMITA-  
22 TIONS.—The Board, in consultation with the Securi-  
23 ties and Exchange Commission and the Commodity  
24 Futures Trading Commission, shall adopt rules im-  
25 posing additional capital requirements and quan-

1       titative limitations regarding the activities permitted  
2       under this section if the Board determines that addi-  
3       tional capital and quantitative limitations are appro-  
4       priate to protect the safety and soundness of the  
5       banking entities and nonbank financial companies  
6       engaged in such activities.

7       “(e) ANTI-EVASION.—

8               “(1) RULEMAKING.—The appropriate Federal  
9       banking agencies, in consultation with the Securities  
10       and Exchange Commission and the Commodity Fu-  
11       tures Trading Commission, shall jointly issue regula-  
12       tions as part of the rulemaking provided for in sub-  
13       section (e) regarding internal controls and record-  
14       keeping in order to insure compliance with this sec-  
15       tion.

16               “(2) TERMINATION OF ACTIVITIES OR INVEST-  
17       MENT.—Notwithstanding any other provision of law,  
18       whenever an appropriate Federal banking agency or  
19       the Securities and Exchange Commission or Com-  
20       modity Futures Trading Commission, as appro-  
21       priate, has reasonable cause to believe that a bank-  
22       ing entity or nonbank financial company under the  
23       respective agency’s jurisdiction has made an invest-  
24       ment or engaged in an activity in a manner that is  
25       intended to evade the requirements of this section

1 (including through an abuse of any permitted activ-  
2 ity), the appropriate Federal banking agency or the  
3 Securities and Exchange Commission or Commodity  
4 Futures Trading Commission, as appropriate, shall  
5 order, after due notice and opportunity for hearing,  
6 the banking entity or nonbank financial company to  
7 terminate the activity and, as relevant, dispose of  
8 the investment; provided that nothing in this sub-  
9 paragraph shall be construed to limit the inherent  
10 authority of any Federal agency or state regulatory  
11 authority to further restrict any investments or ac-  
12 tivities under otherwise applicable provisions of law.

13 “(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE  
14 FUNDS AND PRIVATE EQUITY FUNDS.—

15 “(1) IN GENERAL.—No banking entity that  
16 serves, directly or indirectly, as the investment man-  
17 ager or investment adviser to a hedge fund or pri-  
18 vate equity fund may enter into a covered trans-  
19 action, as defined in section 23A of the Federal Re-  
20 serve Act (12 U.S.C. 371e) with the hedge fund or  
21 private equity fund.

22 “(2) TREATMENT AS MEMBER BANK.—A bank-  
23 ing entity that serves, directly or indirectly, as the  
24 investment manager or investment adviser to a  
25 hedge fund or private equity fund shall be subject to

1 section 23B of the Federal Reserve Act (12 U.S.C.  
2 371e–1), as if such person were a member bank and  
3 such hedge fund or private equity fund were an affil-  
4 iate thereof.

5 “(g) LIMITATION ON CONTRARY AUTHORITY.—No  
6 activity that is authorized for a banking entity or a  
7 nonbank financial company supervised by the Board under  
8 any other provision of law may be engaged in, directly or  
9 indirectly, by a banking entity or a nonbank financial com-  
10 pany supervised by the Board under such authority or  
11 under any other provision of law, if such activity is prohib-  
12 ited or restricted under this section.

13 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
14 tion may be construed to limit the inherent authority of  
15 any Federal agency or state regulatory authority under  
16 otherwise applicable provisions of law.

17 “(i) DEFINITIONS.—In this section, the following  
18 definitions shall apply:

19 “(1) BANKING ENTITY.—The term ‘banking en-  
20 tity’ means any insured depository institution (as de-  
21 fined in section 3 of the Federal Deposit Insurance  
22 Act (12 U.S.C. 1813)), any company that controls  
23 an insured depository institution, or that is treated  
24 as a bank holding company for purposes of section

1 8 of the International Banking Act, and any affiliate  
2 or subsidiary of any such entity.

3 “(2) HEDGE FUND; PRIVATE EQUITY FUND.—

4 The terms ‘hedge fund’ and ‘private equity fund’  
5 mean a company or other entity that is exempt from  
6 registration as an investment company pursuant to  
7 section 3(c)(1) or 3(c)(7) of the Investment Com-  
8 pany Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–  
9 3(c)(7)), or such similar funds as jointly determined  
10 appropriate by the appropriate Federal banking  
11 agencies, the Securities and Exchange Commission,  
12 and the Commodity Futures Trading Commission.

13 “(3) NONBANK FINANCIAL COMPANY.—The

14 terms ‘nonbank financial company supervised by the  
15 Board’ and ‘nonbank financial company’ mean any  
16 United States nonbank financial company or foreign  
17 nonbank financial company supervised by the Board  
18 under section 113 of the Financial Stability Act of  
19 2010.

20 “(4) PROPRIETARY TRADING.—The term ‘pro-

21 prietary trading’ means engaging as a principal for  
22 its own trading account in any transaction to pur-  
23 chase or sell, or otherwise acquire or dispose of, any  
24 security, contract of sale of a commodity for future  
25 delivery, any option on any such contract, swap, se-

1 security-based swap, or any other security or financial  
2 instrument that the appropriate Federal banking  
3 agencies, in consultation with the Securities and Ex-  
4 change Commission and the Commodity Futures  
5 Trading Commission, may jointly, by rule, deter-  
6 mine.

7 “(5) TRADING ACCOUNT.—For all banking enti-  
8 ties and nonbank financial companies covered by this  
9 section, the term ‘trading account’ shall be defined  
10 consistent with guidance issued by the Board with  
11 regard to financial statements of bank holding com-  
12 panies and shall include any account used for ac-  
13 quiring or taking positions in such items principally  
14 for the purpose of selling in the near term (or other-  
15 wise with the intent to resell in order to profit from  
16 short-term price movements), and any such other ac-  
17 counts as the appropriate Federal banking agencies,  
18 in consultation with the Securities and Exchange  
19 Commission and the Commodity Futures Trading  
20 Commission, may jointly, by rule, determine.

21 “(6) SPONSOR.—The term to ‘sponsor’ a fund  
22 means to—

23 “(A) serve as a general partner, managing  
24 member, or trustee of a fund;



1           “(B) in any manner select or control (or  
2           having employees, officers, or directors, or  
3           agents who constitute) a majority of the direc-  
4           tors, trustees, or management of a fund; or

5           “(C) share with a fund, for corporate,  
6           marketing, promotional, or other purposes, the  
7           same name or a variation of the same name.”.

8   **SEC. 619A. STUDY OF BANK ACTIVITIES.**

9           (a) **STUDY.**—Not later than 18 months after the date  
10          of enactment of this Act, the appropriate Federal banking  
11          agencies shall jointly review and prepare a report on ac-  
12          tivities permitted as part of the business of banking under  
13          Federal and State law including activities authorized by  
14          statute and by order, interpretation and guidance and  
15          shall as part of the report review and consider—

16                 (1) the type of activities or investment;

17                 (2) any financial, operational, managerial or  
18          reputation risks associated with or presented as a  
19          result of the banking entity engaged in the activity  
20          or making the investment; and,

21                 (3) risk mitigation activities undertaken by the  
22          banking entity with regard to the risks.

23           (b) **REPORT AND RECOMMENDATIONS TO THE COUN-  
24          CIL AND TO CONGRESS.**—The appropriate Federal bank-  
25          ing agencies shall submit to the Council, the Committee

1 on Financial Services of the House of Representatives,  
2 and the Committee on Banking, Housing, and Urban Af-  
3 fairs of the Senate the study conducted pursuant to sub-  
4 section (a) no later than two months after its completion.  
5 In addition to the information described in subsection (a),  
6 the report shall include recommendations regarding—

7           (1) whether each activity or investment has or  
8           could have a negative effect on the safety and sound-  
9           ness of the banking entity or the United States fi-  
10          nancial system;

11          (2) the appropriateness of the conduct of each  
12          activity or type of investment by banking entities;  
13          and,

14          (3) additional restrictions as may be necessary  
15          to address risks to safety and soundness.

16 **SEC. 619B. CONFLICTS OF INTEREST.**

17          The Securities Act of 1933 (15 U.S.C. 77a et seq.)  
18 is amended by inserting after section 27A the following:

19 **“SEC. 27B. CONFLICTS OF INTEREST RELATING TO CER-**  
20 **TAIN SECURITIZATIONS.**

21          “(a) IN GENERAL.—An underwriter, placement  
22 agent, initial purchaser, or sponsor, or any affiliate or sub-  
23 sidiary of any such entity, of an asset-backed security (as  
24 such term is defined in section 3 of the Securities and  
25 Exchange Act of 1934 (15 U.S.C. 78c), which for the pur-

1 poses of this section shall include a synthetic asset-backed  
2 security), shall not, during such period as the asset-backed  
3 security is outstanding or such lesser period as the Com-  
4 mission determines is appropriate, engage in any trans-  
5 action that would involve or result in any material conflict  
6 of interest with respect to any investor in a transaction  
7 arising out of such activity.

8 “(b) RULEMAKING.—Not later than 180 days after  
9 the date of enactment of this section, The Commission  
10 shall issue rules for the purpose of implementing sub-  
11 section (a) including any appropriate disclosures or other  
12 measures.

13 “(c) EXCEPTION.—The prohibitions of subsection (a)  
14 shall not apply to risk-mitigating hedging activities nec-  
15 essary to conduct the underwriting, placement, initial pur-  
16 chase, or sponsorship, provided that this subparagraph  
17 shall not otherwise limit the application of section 15(G)  
18 of the Securities Exchange Act of 1934 (15 U.S.C. 78a  
19 et seq.).”.