United States Senate
WASHINGTON, DC 20510

May 17, 2012

Hon. Ben Bernanke, Chairman
Federal Reserve Board
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Mr. Thomas Curry, Comptroller
Office of the Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

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

Hon. Martin Gruenberg, Acting Chairman
Federal Deposit Insurance Commission
550 17th Street, NW
Washington, DC 20429

Re: JPMorgan Loophole

Dear Messrs. Bernanke, Curry, Gruenberg, and Gensler, and Ms. Shapiro:

The massive failed bet by JPMorganChase provides a stark reminder why we desperately need your agencies to implement the Volcker Rule – a modern Glass-Steagall firewall that separates our core banking system from high-risk, hedge fund-style proprietary trading. We again urge you to remove ill-advised loopholes and implement a strong Volcker Rule without further delay.

Proprietary trading positions led to billions of dollars in losses during the financial crisis and threatened the collapse of many key institutions. Taxpayers had to bail out these big banks to prevent the economy from further collapsing into depression. Even with the bailouts, several banks had damaged themselves so badly that they remained crippled, leaving far too many American businesses and families without the credit they need to prosper.

Congress determined taxpayers should never again be called upon to bail out proprietary trading bets gone bad. It determined that high-risk, conflict-ridden trading should not be subsidized by taxpayer insured deposits and cheap credit from the Federal Reserve – benefits designed to support the flow of credit to families and businesses, and not to underwrite speculation on the ups and downs of markets. And when those hedge fund-style proprietary trading bets go bad, they should not endanger the banks our families and businesses depend upon.

Now, after receiving trillions of dollars in public bailout funds, many large financial institutions have been vigorously resisting even the most basic, common sense reforms. Most fought fiercely against the passage of the Dodd-Frank Act. And they lost. Now, they are fighting again to water down reform in the regulatory process.

When Congress passed the Merkley-Levin provisions, and the President signed it into law, that should have been the end of the matter. But Wall Street lobbyists' efforts to relitigate financial reform at the regulatory agencies stand dangerously close to being rewarded.

Pressure from lobbyists during the rulemaking process gave rise to regulatory loopholes that would allow proprietary trading to be hidden within market-making, risk-mitigating hedging, and wealth management, among other areas.

For example, the law allows for risk-mitigating hedging activities provided that they are "designed to reduce the specific risks" to a firm's "positions, contracts, or other holdings." This was intended to provide a way for banks to reduce their risks by engaging in true, specific hedges. As we informed the Senate before the vote on this provision, the "sole purpose is to lower risk." We further explained to the Senate that we had strengthened the language from prior drafts to assure that any permitted hedge must be "applied to specific, identifiable assets." And we further warned that "vigorous and robust regulatory oversight ... will be essential to prevent hedging from being used as a loophole in the ban on proprietary trading." (156 Cong. Rec. S5896, July 15, 2010)

To our disappointment, last fall's proposed rule ignored the clear legislative language and clear statement of Congressional intent and allowed for so-called "portfolio hedging." Now, in recent days, we've seen exactly what "portfolio hedging" might mean. This "JPMorgan Loophole" is big enough to drive a "London Whale" through.

While some executives involved in these trades have lost their jobs in the wake of these losses – which reportedly stand at $2 billion and counting – and the Department of Justice and the Securities and Exchange Commission are investigating to determine whether laws were broken, that does not address the issue of whether banks should be allowed to take these types of bets. Nor is this is about personalities. It is about rules and incentives. So long as banks have the incentives to make these types of bets, and are permitted to do so, they will. As we have learned time and again, establishing clear, strong rules of the road is critical for the healthy functioning of markets and our economy.

The job before you is straightforward: implement the law we passed and the reforms our financial system needs. Establish the strong firewall the Merkley-Levin provisions demand by eliminating the loopholes and drawing clear bright lines. Until that is done, multi-trillion dollar banks will continue to put not just themselves, but the rest of us, at risk.

Sincerely,

Jeff A. Merkley

Carl Levin