The Truth About Senator Brown and Dodd-Frank

Myth – Fact and Media Coverage

Wall Street and the financial services industry strongly opposed the Dodd-Frank law, which has hundreds of major provisions, ranging from regulation of derivatives to mortgages to consumer protection. Brown was criticized by his own party for being one of only three Republicans to support it.

Myth: Senator Brown weakened proprietary trading restrictions in the Volcker Rule.

Fact: The Volcker Rule is a Two Part Rule. Part 1 contains the restrictions on proprietary trading. Senator Brown focused on Part 2, investment funds, where poorly drafted restrictions threatened to kill jobs at Massachusetts asset managers, without making the financial system any safer.

1) The primary point of the Volcker Rule (Part 1) is to ban banks from risky trading for their own account (proprietary trading). Risky derivatives trading is what has recently brought media attention to companies like JPMorgan. **Senator Brown did not seek to change these Volker restrictions on proprietary trading during the consideration of Dodd-Frank**. Brown has consistently favored the stronger rules on derivatives and has consistently said that the proprietary trading restrictions should be implemented.

2) On Part 2 of the Volcker Rule, Senator Brown worked with Congressman Barney Frank in fighting to ensure that insurance companies and asset managers in Massachusetts (companies like Mass Mutual in Springfield who did not cause the financial crisis and never accepted TARP bailout funding from the government), could continue to invest in and offer investment funds to their clients as long as they met the new restrictive requirements, rather than having to completely shut down various divisions and lay off their workers.

Myth: Senator Brown Sought to Loosen Bank Rules and tried to shield banks and financial institutions from Dodd-Frank's tough provisions.

Fact: The Senate Wall Street Reform bill that Brown supported was **stronger** than the House bill passed by Barney Frank. Senator Brown, with Congressman Frank and the Massachusetts delegation, fought to protect jobs in Massachusetts from overly burdensome regulations that were intended for risky Wall Street institutions. The Massachusetts financial sector employs 170,000 people, is responsible for 10% of the Gross State Product ($35.5 billion) and is the 2nd largest industry in Massachusetts.
http://www.massinsight.com/publications/corporate/116/file/1/pubs/2010/10/22/Mass_Insight_Financial_Services_Study_10.20.pdf

Myth: Senator Brown advocated for a loose interpretation of Dodd-Frank to allow banks to engage in high-risk investments.

Fact: Senator Brown supported the Volcker Restrictions on proprietary trading. He worked with the Treasury department to ensure that the Dodd-Frank rule making follows Congress' intent, especially in areas where both parties worked very hard to reach a compromise. Traditional asset management in Boston and Springfield that Brown fought for is not a high-risk activity and does not involve proprietary trading.

Myth: Senator Brown helped create a provision to allow banks to invest up to 3 percent of their money in riskier investments like hedge funds and private equity funds, which won him Wall Street support.

Fact: Senator Brown worked with Representative Frank to protect jobs in Massachusetts at safe financial institutions that sponsor investment funds but not do engage in high risk proprietary trading, had done nothing to cause the financial crisis and yet were getting hit by the Volcker rule.

Representative Barney Frank stated in a May 20, 2010, letter to Majority Leader Reid and Senator Dodd: "As you know Senators Kerry, Brown, and I, along with the Massachusetts House delegation, have been working for some time to insure that the legitimate business interests of Massachusetts institutions are not unnecessarily disadvantaged by the pending financial reform legislation."
http://multimedia2.heraldinteractive.com/misc/05-20-10-reid-dodd-fin-reform-1.pdf

Myth: Senator Brown urged regulators to interpret the 3 percent rule broadly and to offer banks some leeway to invest in hedge funds and private equity funds.

Fact: Senator Brown asked the regulators to uphold the statute as written. The 3 percent rule was designed to help asset management companies to establish funds and provide these funds with sufficient initial equity for investment to attract unaffiliated investors. Asset management clients and consultants typically only seek funds in which employees have "skin in the game" because it prevents conflicts of interest and reflects employees' desire to invest in funds.

Myth: Senator Brown urged regulators to calculate the 3 percent cap at the end of the "seeding period" to allow banks to take a greater stake in the fund without breaking the rule.

Fact: Senator Brown urged regulators to follow the intent of the statute as written. Without the 3 percent allowance, the Volcker rule threatened to derail money market funds, stock funds and traditional asset management that Boston banks, asset managers, ordinary savers and investors depend on. The Volcker Rule allows banking entities to invest in the investment funds that they organize so that they have sufficient equity to attract unaffiliated investors. The banking entity must actively seek unaffiliated investors to dilute the banking entity's interest so that it does not own more than 3 percent of the fund within a year. The banking entity can also apply to the Fed for an extension of up to two years to comply with this requirement to allow banking entities to gradually reduce its interest in the fund without unsettling the fund. For the same rationale, the 3 percent calculation should be done at the end of a seeding period.

Representative Frank agrees with Senator Brown. In a May 20, 2010 letter, Representative Barney Frank states that the House-passed bill "[did] not prohibit depository institutions or their parent holding companies or affiliates from customer-driven trading, or limited fund sponsorship and investment to meet the needs of their clients as part of traditional asset management activity."
http://multimedia2.heraldinteractive.com/misc/05-20-10-reid-dodd-fin-reform-2.pdf

Myth: Senator Brown urged regulators to define "customer" broadly to bring in more non-banking customers to invest in hedge funds and private equity funds, rather than restricting those funds to customers who already have deposits in or relationships with the bank.

Fact: Senator Brown urged regulators to follow the intent of the statute as written. As part of Dodd-Frank's requirements, the Financial Stability Oversight Council conducted a study of how "customer" should be defined for the purpose of this rule. They issued an opinion that two different definitions could be used: one that followed the longstanding SEC requirement that a customer have a "substantive pre-existing relationship" with the financial institution to satisfy the conditions for a private placement. Alternatively, the Financial Stability Oversight Council study proposed an alternative definition that typically only applies to identity theft, privacy regulations and consumer provisions. The alternative definition of "customer" would limit the definition to only individuals or entities with an actual bank account or similar relationship with a bank. Using the alternative definition would lead to a wind-down of the bank-affiliated asset management model and completely undermine the bill's intent.

Myth: Senator Brown urged regulators to not count "carried interest" toward the 3 percent cap because it would be taxed at a lower rate than regular income.

Fact: Senator Brown urged regulators to follow the intent of the statute as written. The carry rule has nothing to do with tax rates in this context. Carried interest involves how investment profits are divided, not how much is invested to begin with, so it would be literally impossible to calculate its impact on the percentage breakdowns of a fund.

Myth: Senator Brown urged regulators to narrowly interpret the prohibition on bailing out troubled hedge funds and private equities and to allow banks to bail out nonaffiliated funds.

Fact: Senator Brown urged regulators to follow the intent of the statute as written. The Financial Stability Oversight Council study suggested that the bailout prohibition of the Volcker Rule could be extended to include funds with which a banking entity has substantial relationships, without specifying that they need to be an affiliate of the banking entity under the Bank Holding Company Act. This was an amendment that was offered in the Senate, but never received a vote. The Congressional intent is clear: it does not extend to those entities suggested by that amendment. Section 23B of the Federal Reserve Act prohibits banking entities and affiliated funds from investing in unaffiliated funds.

Support for Brown on Financial Regulation

Scott Brown Was The Deciding Vote In Favor Of Financial Regulation

Scott Brown was the deciding vote in favor of Dodd-Frank. (H.R. 4173, CQ Vote #208: Adopted (thus cleared for the president) 60-39: R 3-38; D 55-1; I 2-0, 7/15/10, Brown Voted Yea)

Praise for Senator Brown's Role in Financial Reform

Congressman Barney Frank: "What [Brown] did was to tell the Senate that he supported the House bill. … He asked me if I would write to Sen. Dodd and Sen. [Harry] Reid and tell them I am going to stick by my bill. ... He didn't change anything. He added to the leverage I have [to insist on the House bill's provisions.]" (Chris Frates, "Finance Lobbyists Keep A Low Profile," Politico, 6/7/10)

President Obama thanked the "three Republican Senators" – Senators Snowe, Collins, and Brown – "who put partisanship aside, judged this bill on the merits and voted for reform." (Sunlen Miller, "Wall Street Reform Signed Into Law," ABC News, 7/21/10)

Senator Dodd: "During the debate on Wall Street Reform, Scott Brown has demonstrated how bipartisanship is supposed to work…when he had concerns about the bill, he worked with members of both parties to see that they here addressed." (Matt Viser, "Brown Will Back Financial Overhaul," The Boston Globe, 7/13/10)

***The Cape Cod Times, Editorial*: "Sen. Scott Brown was swept into office on a platform of independence from partisan politics, and once again it appears our freshman Senator is going to buck his own party and support a major overhaul of our Financial Regulatory System…Keep up the good work, Senator Brown."** (Editorial, "Maverick Brown," Cape Cod Times, 7/16/10)

***The Republican (Springfield), Editorial*: "US. Sen. Scott Brown, R-Mass., last week offered the first bit of evidence that he does, indeed, occupy 'The People's Seat' when he joined two other New England Republicans to help pass a sweeping overhaul of financial regulations aimed at preventing the 2008 Wall Street meltdown that has wreaked havoc on the American economy."** (Editorial, "Financial Reform Bill Victory For Consumers," The Republican, 7/19/10)

Senator Brown Stands up for Massachusetts Companies

***The Republican*: "We also applaud Brown for collaborating with U.S. Sen. John F. Kerry and Springfield-based MassMutual Financial Group to come up with a compromise that addresses the company's concern that new rules on fiduciary responsibility might negatively impact its agents who are independent contractors."** (Editorial, "Financial Reform Bill Victory For Consumers," The Republican, 7/19/10)

***The Boston Herald, Editorial*: "And working in partnership with Rep. Barney Frank, who led House efforts on the reform bill, Brown helped to secure protections for Massachusetts financial institutions while prompting supporters to drop that $19 billion bank tax slipped in to finance all the new regulation."** (Editorial, "Financial Reform Revived," The Boston Herald, 7/14/10)

***The Boston Globe, Editorial*: "More than his Republican colleagues, Brown has tried to steer a moderate course on Financial Reform, accepting the need for closer regulation while looking out for the concerns of local employers such as MassMutual and Fidelity."** (Editorial, "Brown Forces New Finance Bill, Now He Must Support It," The Boston Globe, 7/1/10)