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The Perils of a Middle Road to Regulating Systemic Risk: The Volcker Rule's Risk Backstop Provisions

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The Dodd-Frank Act, enacted after the global financial crisis, requires U.S. financial regulators to define and regulate systemically risky firms and activities—a truly Sisyphean task. In this Essay, we identify two paths regulators have taken: a "descriptive approach," which involves restating the Congressional mandate as regulatory text and creating a qualitative, bespoke process for the identification of systemic risks; and a "prescriptive approach," which involves adopting detailed, specific, and data-driven rules that clearly delineate firms or activities that do, or do not, pose systemic risk.