



Americans for Financial Reform
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March 26, 2011

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to the two bills being offered for suspension consideration today, HR 2779 and HR 2682. Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups.

The financial crisis of 2008 cost the U.S. economy trillions of dollars and millions of jobs, and led to millions of families losing their homes. Globally, economists have estimated that the total cost of the financial crisis could exceed \$60 trillion. Lack of accountability on Wall Street was a key cause of these enormous costs. According to recent polling data, almost 70 percent of Americans favor stronger regulations and oversight on big Wall Street banks and the financial services industry. A large majority also favor the Dodd-Frank Wall Street Reform Act.

The two derivatives bills being offered for suspension consideration today -- HR 2779 and HR 2682 -- are being presented as 'technical amendments' necessary to correct minor issues in the Dodd-Frank Act. This is far from accurate. Both proposed bills are unnecessary and potentially harmful attempts to micromanage the work of regulators in implementing the Dodd-Frank Act. They amplify the views of the regulated industries which already have overwhelmingly greater resources to intervene in the process than do any representatives of the public interest. HR 2779 is drafted in a sweeping and confusing manner that could create many possibly harmful unintended consequences, and is clearly not crafted to achieve a narrow technical purpose. HR 2682 is more narrowly and carefully drafted, but the more limited risk it poses is unnecessary as it simply puts into statute rules already proposed in regulations.

HR 2779 is intended to exempt inter-affiliate swaps from Dodd-Frank regulatory requirements. The idea that at least some swaps between affiliates should not be subject to the full range of Dodd-Frank requirements is not in principle problematic. (For example, certain transactions between wholly owned affiliates might not need to be put out for open competitive bidding in public exchanges). AFR believes that regulators already have the power to exempt such transactions when appropriate. However, should Congress feel that regulators do not already have sufficient statutory authority to exempt inter-affiliate transactions when needed, the problem could be easily addressed through a short, simple grant of such authority, to be exercised at the regulators' option. Inter-affiliate swaps are an area of enormous complexity. The

major Wall Street banks have literally thousands of subsidiaries in dozens of countries. Regulating such swaps should be left to the experts at the regulatory agencies.

Even a quick glance at HR 2779 shows that it is not that kind of clear and simple fix. Instead, the legislation removes all inter-affiliate swap transactions from even the definition of ‘swap’, meaning that swaps regulators would have no jurisdiction over such transactions (with the single exception of certain reporting requirements to regulators). Furthermore, the definition of ‘affiliate’ is extremely broad and goes far beyond simply wholly owned affiliates. In the case of SEC-regulated derivatives, the exemption would include transactions between any entity that is “controlling, controlled by, or under common control with” its counterparty. This could potentially include a very wide range of only partially affiliated entities, including joint ventures and counterparties in which the same third party had only a minority ownership stake. (Minority ownership stakes can be argued to be controlling). Portfolio companies for private equity or hedge funds would be included as well. The exemption for CFTC-regulated derivatives is somewhat narrower, but almost as broad. Any swap which could be structured as a transaction between even these partially affiliated entities would be exempt from core Dodd-Frank requirements ranging from clearing and margin requirements to business conduct rules for swaps dealers designed to prevent fraud and abuse.

Such a broad-ranging ban on swaps regulation could make it impossible to enforce long-standing limitations in banking law on transfer of risk between depository and non-depository subsidiaries of a bank holding company. These limitations are vital to prudential oversight and date back to the Depression. It could also make it impossible for insurance regulators to control risk transfers between insurance plans and other subsidiaries of an insurance company. For this reason, HR 2779 was amended from its original form before reaching the floor to include lengthy reservations of authority for prudential and insurance regulators to allow them to continue prudential regulation of inter-affiliate swaps. The need for such multiple reservations of authority shows clearly that inter-affiliate swaps raise significant prudential issues and that this legislation is far from being a simple technical amendment.

The reservations of authority also highlight another issue, which is the additional complexity this legislation would introduce into swaps regulation. Should HR 2779 pass in its current form, there would be no fewer than four different definitions of ‘swap’ which would correspond to four different scopes of regulatory jurisdiction. The SEC and CFTC would both be barred from oversight over inter-affiliate swaps. However since the term ‘affiliate’ is defined differently in this bill for each agency, this ban would create two separate scopes of jurisdiction, one for each agency. The prudential banking agencies such as the Federal Reserve and the FDIC would be permitted to continue to regulate inter-affiliate swaps under safety and soundness authorities, which could potentially be used to re impose certain Dodd-Frank requirements (but might not be). And state insurance regulators could regulate inter-affiliate swaps affecting insurance funds, but would be explicitly banned from imposing particular Dodd-Frank clearing and margining requirements even if they felt it was necessary.

The regulation of inter-affiliate swaps is a classic example of a complex, potentially significant area which should not be micromanaged by Congress through broad and sweeping statutory bans on regulatory oversight. Indeed, such sweeping forms of deregulation are how we ended up in our current situation. The issue of inter-affiliate swaps should be left to the regulators. HR 2779 should be rejected; it is certainly not merely a technical fix.

HR 2682 is unnecessary to achieve the result proposed in the legislation, as the bill simply puts in statute what the regulators have already proposed. Putting this matter into statute also presents some risk that the less flexible statutory prohibition could unnecessarily limit regulatory flexibility in an area of significance to safety and soundness regulation.

This legislation would remove any Dodd-Frank requirement to margin uncleared swaps in cases where such swaps also qualified for the end user exemption from mandatory clearing. This end user exemption covers swaps used by non-financial companies to manage commercial risk. In fact, the regulators' proposed rules for margining uncleared swaps already exempt swaps by non-financial companies to hedge commercial risk, rendering this legislation redundant and unnecessary. The sole exception in the regulators proposal is in cases where swaps exposures exceed some credit exposure limit set by the bank itself, not by regulators. In other words, the regulators' proposal simply notes that the bank must follow its own internal credit exposure limit policies in all cases, including swaps and derivatives exposures. In almost all cases, banks could be expected to do this voluntarily and without oversight, and exceptions would probably involve poor bank management.

While this legislation is narrowly targeted, if it becomes law the fact that there would be a statutory exemption for Dodd-Frank margin requirements for end user transactions might be used by banks to challenge regulatory oversight even in cases where there was a clear safety and soundness threat regulated under other legal authorities. Given the fact that regulators' proposals show that they are already addressing the end user margin issue along the lines proposed by this bill, it is unnecessary to take this risk.

Thank you very much for your attention to this matter. For more information, please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions

- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers

- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR

- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA

- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

