



Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

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Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 1256, the “Swaps Jurisdiction Certainty Act”.¹ This legislation is supported by Wall Street because it opens a back door in financial regulation that could allow the largest international banks to evade U.S. derivatives regulation by transacting through their foreign subsidiaries.

Proper oversight of foreign subsidiaries is critical for any derivatives regulation to be effective. In the financial crisis, AIG required a \$160 billion public bailout for activities conducted through its London office, and more recently JP Morgan’s ‘London Whale’ lost the company \$6 billion. Bloomberg News has documented that large Wall Street banks routinely transact well over half of their swaps business through foreign subsidiaries.² For this reason, the Dodd-Frank Act granted the Commodity Futures Trading Commission (CFTC), which regulates some 90 percent of U.S. derivatives transactions, oversight over all derivatives transactions that have “a direct and significant connection with” U.S. commerce. Yet HR 1256 would block and hinder this oversight in numerous ways, including by establishing a presumption that derivatives regulations in major foreign markets are adequate to satisfy U.S. derivatives protections. By doing so, it could encourage U.S. financial firms to outsource operations to foreign jurisdictions with weaker rules.

The proper oversight of international derivatives transactions is crucial to effective regulation of U.S. derivatives markets. Financial transactions that are nominally booked in overseas subsidiaries of U.S. banks create risk for the U.S. parent. We have learned this lesson in many crises, most recently in the massive derivatives losses experienced at JP Morgan’s London office, and most painfully in the world financial collapse of 2008. As the chair of the Commodity Futures Trading Commission (CFTC) has stated:

Swaps executed offshore by U.S. financial institutions can send risk straight back to our shores. It was true with the London and Cayman Islands affiliates of AIG, Lehman Brothers, Citigroup and Bear Stearns. A decade earlier it was true, as well, with Long-Term Capital Management. The nature of modern finance is that large financial institutions set up hundreds, if not thousands of “legal entities” around the globe...

¹ [Americans for Financial Reform](http://www.ourfinancialsecurity.org) is an unprecedented coalition of more than 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, faith based and business groups.

² See Brush, Silla, “[Goldman Sachs Among Banks Lobbying To Exempt Half of Swaps From Dodd Frank](#)”, Bloomberg News, January 30, 2012.

Many of these far-flung legal entities, however, are still highly connected back to their U.S. affiliates.

The CFTC, the agency assigned to regulate some 90 percent of U.S. derivatives markets, is already addressing this vital issue. The agency has proposed guidance that would protect U.S. taxpayers and the U.S. economy by preserving jurisdiction over derivatives transactions executed through foreign entities which impact the U.S. economy. The CFTC's balanced approach would apply Dodd-Frank oversight to such transactions, but also allow foreign entities to be regulated under 'substituted compliance' by their local regulator when the agency finds that the relevant foreign rules are as strong as the U.S. rules.

Crucially, the CFTC has taken the position that 'substituted compliance' under foreign rules would only be permitted in cases where the U.S. regulators found foreign regulation to be genuinely equivalent to the relevant U.S. regulation. Maintaining this principle is critical to protecting U.S. taxpayers from the risks of offshore swaps by U.S. institutions. If it is not maintained, we could see a 'race to the bottom' as derivatives transactions move to the least regulated jurisdictions to take advantage of lax rules. This is particularly dangerous since foreign countries are not exposed to the risks to the U.S. taxpayer created due to derivatives losses in foreign subsidiaries of U.S. banks.

HR 1256 would seriously undermine the capacity of regulators to assure that U.S. derivatives transactions conducted through foreign entities are subject to regulations that meet U.S. standards. It does this in several ways.

First, HR 1256 would effectively create a presumption that overseas derivatives transactions will be ruled by foreign country rulemaking rather than U.S. rulemaking. The current CFTC guidance only permits 'substituted compliance' when U.S. regulators determine that relevant foreign rules are as strong as the U.S. rules. But HR 1256 instead establishes a strong statutory presumption that transactions in the world's major derivatives markets will be governed by foreign regulatory rules in the host country rather than U.S. rules. The statutory presumption that foreign rules govern could only be overturned if both the CFTC and SEC make a joint determination, supported by a formal report to Congress, that the foreign country rules are not 'broadly comparable' to U.S. rules. This determination could be challenged in court on the basis of the 'broadly comparable' language in HR 1256, creating significant litigation risk.

Thus, U.S. regulators would face major new hurdles in applying derivatives rules to overseas transactions, even where these transactions clearly posed a risk to the U.S. economy. This would not only weaken protections for U.S. financial markets, it would weaken the U.S. negotiating position in pressing foreign governments for adequate derivatives rules. The statutory roadblocks to properly enforcing U.S. derivatives rules that are created by HR 1256 would undercut the U.S. government before negotiations are even begun. They create numerous additional opportunities for Wall Street to undermine effective regulation.

Second, HR 1256 strips the CFTC of authority to independently determine derivatives rules for overseas transactions. It requires any such rules to be passed by a joint rulemaking between the SEC and CFTC, which must specify identical rules. The SEC regulates less than 10 percent of the gross notional swaps market, and has jurisdiction over different types of swaps than the CFTC does. Furthermore, the agencies are already required to harmonize their regulation where appropriate. A joint rulemaking is not needed for coordination, as the agencies regulate different derivatives markets. But it would hinder and delay the CFTC's work to regulate extraterritorial derivatives transactions. The purpose of this joint rulemaking requirement is simply to add more hurdles and more delay before any action can be taken, making effective regulation less likely.

In addition to the impact of additional bureaucratic hurdles, in this case a joint rulemaking requirement would also represent a dramatic roll back of the statutory mandate granted to the CFTC in overseeing 90% of the swaps market. Section 722(d) of the Dodd-Frank Act grants the CFTC jurisdiction over all activities that have a "direct and significant connection with activities in, or effect on, commerce of the United States". This is clearly the appropriate jurisdiction to protect U.S. taxpayers and the U.S. economy – it is obviously critical that U.S. regulators have jurisdiction over potentially risky transactions that are directly connected to the U.S. economy. Yet the SEC has no such clear statement of jurisdiction in the Dodd-Frank Act. The effect of requiring joint rulemaking would be to eliminate the CFTC's clear grant of jurisdiction over those transactions that are directly connected to U.S. commerce.

This long and complex legislation raises other issues as well. However, the core issue is that oversight of swaps transactions in foreign subsidiaries of U.S. banks is not a side issue in derivatives regulation. It is at the heart of effective oversight of these vast and complex markets. The thousands of subsidiaries of major global banks allow them to transmit cash flows and risk from derivatives contracts around the world with unprecedented ease. If derivatives transactions impacting the U.S. market that are conducted through foreign subsidiaries are not properly regulated, then no regulation of U.S. derivatives markets can be effective. The numerous additional statutory restrictions created by HR 1256 to block U.S. oversight of derivatives transactions conducted overseas would undermine derivatives regulation as a whole and weaken protections against financial instability.

Thank you for your consideration. 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.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- 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
- Center for Effective Government
- 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
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- 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
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- 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 Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- 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 Partners

- 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

