



**AMERICANS
FOR FINANCIAL REFORM**
ACCOUNTABILITY • FAIRNESS • SECURITY

January 7, 2015

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

Dear Representative,

On behalf of Americans for Financial Reform (AFR), we are writing to urge you to oppose HR 26, the Terrorism Risk Insurance Act (TRIA).¹

We do not have a position on the renewal of TRIA as an insurance program. However, we protest the inclusion of an entirely irrelevant provision that would weaken financial regulatory protections by banning the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) from any oversight of margin and collateral for derivatives transactions with commercial end users.

This provision is unnecessary to address any current issue in the derivatives markets. Derivatives regulators have already acted to exempt derivatives transactions with commercial end users from margin and collateral requirements.² However, the effect of the proposal would be to permanently remove any ability of the CFTC and SEC to require margin or collateral protections for commercial end user transactions with non-bank derivatives dealers.

Collateral and margin requirements are a core element of financial regulatory oversight, as collateral is a primary form of protection against derivatives losses. These losses can occur in transactions with commercial end users just as they can in any other transaction. As stated by former U.S. Comptroller Walsh, a Republican appointee, swaps with commercial end users clearly create the risk of loss³:

“...swaps with a commercial end user do expose the dealer to credit risk, similar to an unsecured line of credit...Banks report charge-offs of derivatives exposures nearly every quarter. They are typically related to swaps with commercial borrowers, who have indeed used swaps as a hedge.”

¹ [Americans for Financial Reform](http://ourfinancialsecurity.org/about/our-coalition/) 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. A list of AFR coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>.

² See Board of Governors of the Federal Reserve System, Federal Deposit Insurance Agency, and Office of the Comptroller of the Currency, “[Margin and Capital Requirements for Covered Swaps Entities: Proposed Rule](#)”, Federal Register Vol. 79, No. 185, Wednesday, September 24th, 2014; Commodity Futures Trading Commission, “[Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants: Proposed Rule](#)”, Federal Register, Friday, October 3rd, 2014.

³ Response from John Walsh, Acting Comptroller of the Currency, to questions for the record by Senator Crapo, December 6, 2011. Available at <http://www.chathamfinancial.com/wp-content/uploads/2012/03/Walsh-Resp-to-Crapo-QFRs-12-6-11.pdf>

Depriving the CFTC and SEC of any ability to require this elementary form of protection should it become necessary is dangerous, and has no place in an entirely unrelated bill devoted to terrorism risk insurance. The derivatives provision could easily be removed from the bill, or modified to preserve the CFTC and SEC's underlying authority to require derivatives margin for transactions with commercial companies where necessary for safety and soundness purposes. Since regulators have already acted to create a general exemption for commercial end users, it seems clear that they would only use this authority where they observed new risks emerging in the market.

Instead, this legislation represents a continuation of the recent pattern of placing unrelated financial deregulatory provisions into so-called 'must-pass' bills. If this pattern is continued, it threatens to gradually unravel the gains made in re-regulating the financial sector after the financial crisis of 2008.

We therefore urge you to reject HR 26 unless modifications are made to either remove unrelated financial deregulatory provisions or to change those provisions to preserve regulators authority to properly oversee the derivatives market.

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