



**Americans for Financial Reform**  
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November 4, 2011

The Honorable Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> St. and Constitution Ave. N.W.  
Washington, D.C. 20551

The Honorable Martin J. Gruenberg  
Acting Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, D.C. 20429

Mr. John G. Walsh  
Acting Comptroller of the Currency  
Administrator of National Banks  
Washington, D.C. 20219

Dear Chairman Bernanke, Acting Chairman Gruenberg, and Acting Comptroller Walsh:

On behalf of Americans for Financial Reform, we are writing to express our concern over reports that, with Merrill Lynch under pressure, the Federal Reserve Board has permitted Bank of America Corporation to move large amounts of derivatives to its insured depository subsidiary.

Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to support reforms in the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as respected experts.

We know that ten U.S. Senators, led by Senator Sherrod Brown of Ohio, as well as eight members of the House of Representatives led by Representative Brad Miller of North Carolina, have already written you laying out a set of important questions on this issue. We want to emphasize our view that these are fundamentally important matters and the public has the right to be informed about them. Allowing a very large Wall Street bank to move risky assets in a way that could affect public liability in the event of a resolution would be contrary to all of our efforts to end public subsidies to ‘too big to fail’ banks.

As you know, Section 23A of the Federal Reserve Act is designed to prevent an insured depository institution's affiliates from benefitting from its federal subsidy and to protect it and the insurance fund from excessive risk originating within a non-bank affiliate. The depository subsidiary should be shielded from the risks in the holding company and if possible the holding company should serve as a "source of strength" for the banks. In this case the situation appears to have been reversed with the publicly insured deposit subsidiary being used to support the bank holding company. Moving these risky derivatives out of the holding company affiliate and into the retail bank could create substantial additional risks for the FDIC's Deposit Insurance Fund should the bank fail. The safe harbors available for derivatives in bankruptcy procedures would complicate a resolution as well.

An exemption for Bank of America would continue a disturbing trend in which major investment banks have been granted 23A exemptions in order to transfer large derivatives books to their insured subsidiaries. During the financial crisis both Goldman Sachs and Morgan Stanley were granted such exemptions, despite the fact that they had only recently become bank holding companies.

If an exemption for Bank of America would violate the spirit of Section 23A, it would perhaps do even more to violate the spirit of the recently passed Dodd-Frank Act (DFA). Multiple sections of the DFA – such as Section 619 and 716 -- call for greater separation between core banking activities such as deposits and lending and risky investment bank activities. While certain types of less complex derivatives can be a part of core banking activities, the full derivatives book of a bank holding company is likely to contain large amounts of essentially speculative derivatives. Depending on the size and counterparties of any derivatives transferred, this transfer could also result in concentrations of credit exposures to individual clients or financial institutions above 10 percent of the bank's capital. If so, this would exacerbate systemic risk and violate the restrictions on bank interconnectedness and concentration of credit exposure in Section 610 of the DFA. As part of informing the public about these important issues, we would ask you to address the following questions:

1. Has the Federal Reserve in fact approved a transfer of derivatives from Bank of America's Merrill Lynch subsidiary to the bank's insured depository subsidiary? If so, how large is this transfer in notional value?
2. If such a transfer has been approved, what public policy purpose does it serve?
3. What impact would such a transfer have on the ability to safely resolve Bank of America without exposing either taxpayers or the Deposit Insurance Fund to additional losses that would not have occurred without the transfer?
4. What impact would such a transfer have on the concentration of credit exposures and systemic risk?

Finally, and perhaps most importantly, if this transaction has taken place, we are disturbed by the lack of transparency and public discussion concerning it. A major lesson of the financial crisis is that key choices about risks taken at our systemically critical financial institutions are and ought to be matters of public concern. We urge you to provide public responses to the questions posed by the letters from Congress that you have received, as well as the questions above.

We look forward to your response.

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
- AARP
- 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
- 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
- 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





