



**Americans for Financial Reform**  
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February 22<sup>nd</sup>, 2011

Mary Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Cc: Luis Aguilar, Commissioner  
Cc: Kathleen Casey, Commissioner  
Cc: Troy Paredes, Commissioner  
Cc: Elisse Walter, Commissioner  
Cc: Elizabeth M. Murphy, Secretary

**Re: File No. S7-22-10 – Short Term Borrowings Disclosure**

Dear Ms. Schapiro:

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 as well as Nobel Prize-winning economists.

We are writing to express our support for the SEC proposal to require increased disclosure of intraperiod short-term borrowings for financial firms. Although we realize that this letter is being sent after the comment deadline, we have been encouraged to express our views by recent statements that the Commission would consider comments submitted after the deadline has passed.

While the financial crisis of 2008 had many dimensions, it was to a significant degree a liquidity crisis. Banks that were heavily dependent on short-term funding through the wholesale markets found their sources of liquidity evaporating, as lenders in the commercial paper and repo market withdrew their support.<sup>1</sup> In some cases this run on short-term funding contributed to the collapse of major institutions, such as Lehman Brothers and Bear Stearns. In others, it led to a need for government support and a withdrawal of credit supply to bank customers.

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<sup>1</sup> Ivashina, Victoria, and David S. Scharfstein. "[Bank Lending During the Financial Crisis of 2008](#)." *Journal of Financial Economics* 97, no. 3 (September 2010): 319-338; Gorton, Gary B. and Metrick, Andrew, "[Securitized Banking and the Run on Repo](#)" (November 9, 2010). Yale ICF Working Paper No. 09-14.

It is precisely this issue that is targeted by the SEC's disclosure proposal. The relationship between these forms of short-term leverage and a historic financial crisis shows the importance of full disclosure to investors of real borrowing levels at financial institutions.

Unfortunately, we now know that this full disclosure was lacking prior to and during the financial crisis. Misrepresentation of leverage and borrowing levels was endemic among major Wall Street financial institutions, including those supervised by the SEC. The most well-known case is the so-called "Repo 105" transactions at Lehman Brothers, in which tens of billions of dollars of repo borrowing was misrepresented as securities sales. The resulting funds were used to pay down liabilities just before end-of-quarter financial reports were made public, thus misrepresenting to investors the true level of borrowing at Lehman. Lehman's own accountants described these transactions internally as an "accounting gimmick" used to "reduce the balance sheet at quarter end".<sup>2</sup>

These kinds of "accounting gimmicks" were not limited to Lehman. Other investment banks – notably Bank of America and Citigroup – have admitted to the SEC that they too misrepresented repo transactions in a similar manner.<sup>3</sup> As in the Lehman case, these transactions were timed to temporarily remove debt from the balance sheet just prior to end-of-quarter financial reports to investors.

These cases show that the current requirement to disclose debt levels to investors only at quarter-end or year-end are not sufficient. Companies can manipulate their reported end-of-quarter debt levels, but investors and regulators cannot assume that creditor or liquidity pressure on a company will be neatly timed to coincide with the end of the quarter. Full disclosure therefore requires that financial companies make clear their maximum levels of short-term debt, at whatever time during the year those borrowings occur.

The SEC's new proposed rule would accomplish this goal by requiring companies to report their average and maximum debt levels over the entire quarter, not just at the end of the quarter. This common-sense provision will provide critical information to investors without an excessive burden on financial companies. Indeed, good internal risk management practices should lead managers to carefully track their debt levels in any case. Given the capacity of modern information technology and the operational need for risk managers to be aware of maximum short-term borrowing levels, we believe that compliance with the SEC proposal is practical for financial institutions.

Investor protection and full disclosure is at the heart of the SEC's mandate and mission. The financial crisis revealed a significant failure by the agency to perform this mission in the area of controlling and disclosing borrowing levels at major financial institutions. This failure had profound consequences for investors and for the economy as a whole. The current proposed rule

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<sup>2</sup> pp. 17-18, [Report of Anton R. Valukas](#), Examiner, In Re Lehman Brothers Holdings, Chapter 11 Case Number 08-13555, United States Bankruptcy Court, Southern District of New York

<sup>3</sup> See April 30, 2010 letter from Citibank CFO to the SEC; May 13, 2010 letter from Bank of America Corporate Controller to the SEC.

on short-term borrowing disclosures represents one important step in addressing this failure. We hope that the final rule will reflect the SEC's commitment to fix the problem.

Thank you for the opportunity to share our views on the proposed rule.

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
- ACORN
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- Calvert Asset Management Company, Inc.
- 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 People's Action
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- 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
- 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

*Partial 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
- 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
- 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

