



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

January 25, 2012

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our concerns about the legislation being considered in committee today. 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 recently passed Dodd-Frank Wall Street Reform Act.

In light of the clear need to address accountability in the financial sector, there has been little support for any attempt to repeal Dodd-Frank outright. So the big banks lobbying against increased oversight have turned to behind-the-scenes attempts to create loopholes in key parts of new regulations. They have also tried to create roadblocks to delay effective regulatory implementation of the bill. Both of these tactics are represented in the bills being considered today. We urge you to reject these bills.

**HR 1840** (Conaway) unnecessarily adds numerous and burdensome additional requirements to the already existing statutory cost-benefit requirements for the Commodity Futures Trading Commission. Existing law (Section 15(a) of the Commodity Exchange Act) already requires the CFTC to consider the costs and benefits of regulatory action before issuing a new regulation. In addition to such consideration, prior to any rulemaking the CFTC must consult extensively with industry and other interested parties who submit comments to the agency. The CFTC has collected and reviewed thousands of public comments and held numerous public round tables on Dodd-Frank rules alone. This legislation would go further by requiring the CFTC to do a detailed comparison of costs and benefits for each and every element in the more than 60 complex rulemakings necessary to enforce the Dodd-Frank Act. A court could overturn the CFTC's decision in any case where it found the comparison inadequate. The legislation would also more than triple the number of factors that the CFTC would be statutorily required to evaluate in cost-benefit analysis. These new evaluation requirements include enormously broad and vague mandates as determining whether a regulation imposes the 'least burden possible' out of a the

enormous set of possible regulatory options. As such, it is a prescription for regulatory inaction and endless legal appeals

The Dodd-Frank Act is the largest expansion of the CFTC's responsibilities in the agency's history. It charges the CFTC with oversight of approximately \$280 trillion in previously unregulated domestic swaps markets, representing a more than seven-fold increase in the notional value of the market the CFTC must supervise. In the face of this massive expansion of responsibilities, Congress has chosen to effectively freeze the CFTC's funding levels and provide almost no additional resources to implement the Dodd-Frank Act. The massive new analytic requirements added by HR 1840 would render the task of implementing Dodd-Frank requirements in a timely manner impossible, particularly in light of the underfunding of the agency. The practical result of passing this legislation would be to create indefinite delays in Dodd-Frank implementation and leave unregulated the massive shadow markets in derivatives that helped crash our economy in 2008.

**HR 2586** (Garrett) would be a particularly damaging blow against a central goal of the Dodd-Frank derivatives framework – the attempt to create transparent, competitive markets for standardized derivatives. This legislation would allow big Wall Street derivatives dealers to continue opaque bilateral trading and allow them to avoid price transparency and fair price competition. Such transparency would permit derivatives end users to negotiate better prices for their hedging transactions and help new competitors enter the market to diversify the small “club” of big Wall Street banks who currently control the market. But HR 2586 would actually prohibit regulators from requiring publicly accessible posting of bid and offer prices on derivatives exchanges. Financial exchanges have thrived for centuries by encouraging transparency and competition. Banning any requirement for public, open price competition on derivatives exchanges is a significant blow against Dodd-Frank derivatives reforms and market fairness. It must be rejected.

**HR 2779** (Stivers) would exempt all transactions between related affiliates from derivatives regulations (except for requirements to report the transaction). The exemption would include not only transactions between wholly owned subsidiaries and a parent company, but also 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). Such a broad exemption would be enormously difficult to police and would greatly increase litigation and uncertainty around derivatives rules.

**HR 2682** (Grimm) is intended to protect “end user” companies from margin requirements on uncleared swaps transactions that hedge legitimate commercial risks. This bill is narrowly targeted and, unlike some other legislation claiming to address “end user” concerns, would not create sweeping new exemptions from derivatives oversight for speculative transactions. However, the legislation is unnecessary and could create significant unintended consequences. It is unnecessary because regulators have clearly respected Congressional intent in the area of end

user margin for non-financial companies performing hedging transactions. Proposals by regulators simply do not require margin for uncleared transactions that hedge legitimate commercial risks. The sole proposal that could affect margin for commercial hedging transactions is a requirement by banking supervisors that banks establish \*some\* limit on unmarginated swaps exposure to a single derivatives counterparty. Such a limit is essentially a credit exposure limit and is standard banking practice. Credit exposure limits are a vital part of prudent bank management and therefore the ability to monitor such limits is a central part of bank supervision. We believe at least some companies would attempt to argue that HR 2682 restricted supervisory authority to require credit exposure limits for derivatives. Regulators have respected Congressional intent in the area of commercial hedging transactions. Given the importance of credit exposure limits to sound banking practice, we believe it would be foolish to take the risk that this legislation could undermine prudential oversight and possibly expose taxpayers to losses from bank failures.

**HR 3527** (Hultgren) purports to “clarify” the definition of swap dealer in the Dodd-Frank statute. Instead, it introduces massive new exemptions into this definition that could easily shelter large-scale swaps dealers from oversight. First, the bill would create a blanket statutory exemption from designation as a derivatives dealer for any firm which is able to argue that it engages in swaps for achieving that firm’s own “trading or investment objectives.” Introducing this subjective motivation for trades as an exemption from oversight is a very dangerous step. Swaps are inherently two-sided transactions, and most firms that engage in swaps as a principal could argue that their intention was to meet some profit objective related to trading or investment for their own book. (Chairman Lucas will introduce a substitute amendment that limits the exemption to cases where principal trading is not part of the “ordinary course of business,” But this attempt at narrowing the exemption is completely insufficient. It would still create an open invitation to endless legal battles by large corporations and financial institutions running swaps businesses alongside other business lines, who would claim that their swaps activity was not part of their “ordinary course of business”). Second, the legislation would also exempt from designation any company that argued its swaps were undertaken for the purpose of hedging commercial risk. Large energy-related swap dealers such as Enron first entered the business by hedging business-related risk, and expanded their operations into trading that was directly connected to such hedges. The combination of these two exemptions would mean that an entire universe of companies that trade in swaps connected to their business could argue for exemption from dealer designation.

In addition to these broad new exemptions, the legislation would increase by thirty-fold – from \$100 million to \$3 billion -- the de minimis exemption from swap dealer designation proposed by the CFTC. The Dodd-Frank statute properly gave the CFTC discretion in determining the de minimis exemption. After extensive research, the CFTC has determined the \$100 million level based on many factors, including the need to provide regulatory protections to small municipalities and pension funds when interacting with swap dealers. Creating a statutory override of their decision is a transparent attempt to expand loopholes in the derivatives regime. The interaction of the greatly expanded de minimis exemption and the broad new exemptions

discussed above is especially pernicious, as dealers could exempt many of their transactions from being counted toward the de minimis level.

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The legislation advanced today is in many cases complex and involved, but that should not hide its real effect – to shift many billions of dollars in revenues toward large derivatives dealers by creating loopholes or delays in Dodd-Frank derivatives rules. These bills would undermine and weaken the derivatives oversight regime passed by Congress in the Dodd-Frank Act, which enjoys wide public support. They should be rejected.

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



