



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

April 11, 2012

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 3527, entitled “Protecting Main Street End Users From Excessive Regulation”.<sup>1</sup> This legislation would create unnecessary statutory roadblocks to enforcement of derivatives oversight under the Dodd-Frank Act. The likely beneficiaries of these new statutory loopholes would not be the ‘Main Street end users’ advertised in the title of the bill. Instead, the bill would benefit large commodity and energy companies such as Koch Supply and Trading and British Petroleum who deal in commodity swaps, as well as hedge funds engaged in large amounts of proprietary swaps speculation. HR 3527 could exempt a large number of potentially risky players in the derivatives market from safety and soundness and business conduct standards that accompany dealer designation. We therefore urge you to oppose HR 3527.

According to recent polling data, almost 70 percent of Americans favor stronger 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. The reasons for this public support are clear. 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. Economists have estimated that the total global cost of the financial crisis could exceed \$60 trillion.

Lack of oversight in unregulated derivatives markets was a key cause of these enormous costs. For the first time, the Dodd-Frank Act will subject these previously unregulated markets to basic oversight. A key part of the Act is the ability of regulators to designate important players in the swaps markets as dealers, who (like banks) are subjected to safety and soundness requirements to ensure that they have the resources to back up the derivatives bets they make and business conduct standards to ensure fair-dealing. Had the American International Group (AIG) been subject to such requirements, it may not have needed a taxpayer funded bailout. To take an earlier example, had Enron been subject to these requirements, it would not have been able to corner the energy swaps markets or to disguise its lack of capital in the ways that it did.

Regulators have yet to issue a final rule that defines ‘swap dealer’, and have issued repeated assurances that this final rule will not cover small ‘Main Street’ end users. But even before

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<sup>1</sup>[Americans for Financial Reform](http://www.ourfinancialsecurity.org) 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.

regulators complete their work, HR 3527 would create significant statutory loopholes that would help to protect large traders from swap dealer designation. First, the bill would exempt from the designation process any swaps used to achieve a firm's own "trading or investment objectives." Second, the legislation would also exempt from the process any swaps undertaken for the purpose of hedging or mitigating commercial risk. The combination of a broad trading exemption and a broad hedging exemption would leave few transactions that qualified a company for swap dealer status – and HR 3527 would further provide that only non-exempted transactions in excess of \$3 billion in notional value per year would permit designation.

The combination of these exemptions could permit several types of large companies to win exemption from dealer designation. The first is large commodity companies with trading operations. About a dozen such firms – including Cargill, Koch Supply and Trading, and Shell Oil -- are major dealer firms that are 'primary members' of the International Swaps and Derivatives Association.<sup>2</sup> Such firms typically begin by hedging business-related risk, and use this market knowledge to do extensive proprietary trading at their own trading desks. Since each swaps transaction is two sided and requires a customer on the other side of the bet, major hedging and trading activity makes these large firms central market players and dealing activity is a natural extension.

Large commodity producers who combine trading with extensive positions in the physical market are very different from smaller entities that seek to hedge in conventional ways. Commodity companies like Cargill and Shell trade the derivatives and physical markets as an integrated business, enabling them to exercise market power even more effectively. The complexity of the line between speculative trades, hedges, and dealing for these companies would open up many opportunities for evasion of oversight.

Second, large hedge funds who do significant amounts of high-frequency proprietary trading in swaps could also evade dealer designation using the exemptions in this bill. These hedge funds play a significant but shadowy role in the swaps markets and use high-frequency and algorithmic trading strategies to execute enormous numbers of trades. Again, since all swaps trades are two-sided this trading activity can give them a central role in the market. The broad exemption for proprietary swaps speculation in this bill would give these hedge funds an easy way to avoid disclosure and capitalization requirements accompanying dealer designation, even if they became de facto market makers.

The proponents of this legislation have not of course come to the floor arguing for exemptions for regulation for large hedge funds doing high-frequency trading or for large commodity trading operations connected to international oil conglomerates like Shell or British Petroleum. Instead, the supposed purpose of the bill is to ensure that small end users like rural electric cooperatives will not be designated as dealers. This ignores repeated assurances from CFTC Chairman Gary

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<sup>2</sup> [International Swaps and Derivatives Association. Primary Member List](#), accessed April 10, 2012.

Gensler that regulators will not designate such smaller entities as dealers and that the agency has adequate exemption authority to prevent this outcome.<sup>3</sup> The CFTC has no reason to promulgate and implement rules that sweep small end users into the dealer category. In fact, such small end user firms will be assisted by new derivatives market rules, as their large dealer counterparties will have to open up competitive bidding for swaps and respect other business conduct rules. Effective oversight of large swap dealers will help smaller end users, not harm them. We urge you to reject HR 3527.

Sincerely,

Americans for Financial Reform

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<sup>3</sup> See e.g. [“CFTC Chairman Gary Gensler Testifies Before House Committee That Most Swaps End-Users Will Not Be Swap Dealers and That Rural Electric Co-Ops, Munis, and RTOs May Be Exempted From Dodd-Frank”](#), Fulbright and Jaworski LLP, March 5, 2012.

## **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

