



Americans for Financial Reform
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August 13, 2012

Mr. David A. Stawick
Secretary, Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington DC 20581

Re: RIN Number 3038–AD85; Exemptive Order Regarding Compliance With Certain Swaps Regulations

Dear Mr. Stawick:

On behalf of Americans for Financial Reform, thank you for the opportunity to comment on the proposed exemptive order regarding compliance with certain swaps regulations. 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 independent experts and academic economists.

As CFTC Chairman Gensler has pointed out, modern financial markets are inherently global in scope.¹ Large Wall Street banks routinely transact well over half of their swaps business through foreign subsidiaries.² Recent history has made it particularly clear that the nominal location of the swaps transaction makes little or no difference to the risk that transaction poses to the parent company. This means that the decisions made by the CFTC with regard to its cross-border jurisdiction are enormously important to the success of derivatives regulation as a whole. Congress clearly recognized the significance of this issue, as it directed that the CFTC apply its regulations to any derivatives activity anywhere in the world with a “direct and significant connection with activities in, or effect on, commerce of the United States”.³

The most significant determinations regarding the extent of cross-border jurisdiction are contained in the July 12th interpretive guidance. However, the proposal in this Order to delay implementation of a wide variety of derivatives requirements for entities located outside the

¹ See Gensler, Gary, “[Remarks on Derivatives and the Cross-Border Application of Swaps Market Reform at the Institute of International Bankers](#)”, June 14, 2012.

² See Brush, Silla, “[Goldman Sachs Among Banks Lobbying To Exempt Half of Swaps From Dodd Frank](#)”, Bloomberg News, January 30, 2012.

³ Section 2(i) of the Commodity Exchange Act, as added by Section 722 of the Dodd Frank Act.

United States until July, 2013 would significantly extend the period where markets lack critical protections against risk derivatives risks. This exemption would delay implementation of basic swaps requirements for critical subsidiaries of major U.S. banks until fully three years after the passage of the Dodd-Frank Act and almost a year after the passage of the rules necessary for banks to implement the Dodd-Frank derivatives regime. This delay would also push the implementation of central derivatives protections past the close-of-2012 deadline that U.S. and global leaders committed to meeting during the 2009 conference of the Group of 20.

This proposed delay is especially concerning for foreign affiliates of U.S. banks whose liabilities are guaranteed (implicitly or explicitly) by the parent company. In such cases there is clear and direct U.S. taxpayer exposure in case of bank failures. Taxpayers have the right to expect that the statutory loss protections such as clearing and margin go into effect as rapidly as possible. The proposal states that the extended exemption granted for these affiliates is connected to the narrow definition of ‘U.S. person’ in the July 12th interpretive guidance. In our future comment on that interpretive guidance, we will make a strong argument that this definition is too narrow.⁴ However, at this point we simply wish to point out that the delay of compliance dates until July, 2013 for these affiliates of key U.S. banking institutions poses a risk to U.S. taxpayers and the broader U.S. economy.

The taxpayer exposure to European banks is somewhat less direct, but it is real and has been significant, as shown by the U.S. taxpayer bailouts of foreign counterparties to AIG Financial Products that occurred during the 2008 crisis. To the extent that these European banks serve as swaps dealers and counterparties to American firms, there is a very direct connection to the US economy and a possible threat created by delaying protections as well.

We recognize that the application of derivatives rules involves complexities and challenges. However, the large swaps entities designated under the Dodd-Frank Act have been aware of the general contours of these requirements for several years, and there have already been significant delays in implementation. In addition, the statement in the exemptive order that “the Commission intends to consider extending the effectiveness of this exemptive relief at its expiration” can only add to concerns that this exemption may evolve into an open-ended invitation to U.S. and U.S.-facing businesses to continue unregulated derivatives practices overseas.

⁴ Similar arguments are also made in Michael Greenberger’s letter to the Commission on this exemptive order.

If, however, the exemptive order is granted, this proposal does contain a number of protections that can help ensure that the lengthy exemption period proposed here does not become open-ended, but is used to make progress toward the full implementation of Dodd-Frank rules by mid 2013. These protections include:

- An exception to the exemptive order for data reporting requirements, applying to all transactions with U.S. counterparties, and all transactions of any type made by affiliates of U.S. entities.
- A requirement that any swaps entity taking advantage of this exemptive order must still register with the CFTC on the required date in October, 2012.
- A requirement that any swaps entity taking advantage of this order must file a compliance plan with the National Futures Association laying out exactly how it plans to comply with all regulatory requirements as they will be applied under the cross-border interpretive guidance.

It is vital that all of these protections be fully maintained if the exemptive order is granted. The reporting requirements give critical information to regulators, without which future implementation will be difficult. The registration and compliance plan requirements will help create a clear path to actual implementation of Dodd-Frank derivatives standards. Weakening or eliminating any of these critical protections would make it more difficult for the CFTC to exercise the cross-border jurisdiction required by the Dodd-Frank Act and necessary to protect the U.S. economy. It would also feed a sense of confusion and uncertainty regarding the willingness of the CFTC to do so.

Much of the concern regarding cross-border implementation of Dodd-Frank rules appears to be driven by the delay in finalizing the various European derivatives regulations as compared to the U.S. timetable. We urge the Commission to view U.S. leadership in completing derivatives regulation as an opportunity rather than a problem. Congress has clearly instructed the CFTC to ensure that Dodd-Frank derivatives standards apply to all global derivatives activity that has a significant connection to U.S. commerce. The Commission now enjoys the opportunity to take a leadership position in setting the standard for U.S.-related activity. By pressing on with implementation of Dodd-Frank cross-border requirements the United States can send a message that only rules that reach the Dodd-Frank standard will be recognized as appropriate for U.S. banks or for banks dealing with U.S. customers.

Furthermore, this message accords well with existing global agreements. All major world financial centers have agreed to follow the G-20 principles for regulation of derivatives and financial markets. The Dodd-Frank regulations represent an appropriate implementation of these principles. To the extent other nations fully live up to their G-20 commitments they should meet the Dodd-Frank requirements as well (including requirements for margining of uncleared

derivatives, as these relate to global commitments to reduce financial leverage generally). In fact, due in part to this exemptive order it appears that both Europe *and* the United States will lag behind the agreed G-20 deadline for implementation of central clearing – G-20 leaders committed at the 2009 Pittsburgh summit to institute mandatory clearing and exchange trading by the close of 2012.⁵ The fact that Europe may miss it by more than the United States is hardly a reason for the U.S. to step back from our commitment to timely implementation.

We appreciate the opportunity to comment on the proposed rule. If you have any questions, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

Americans for Financial Reform

⁵ See Financial Stability Board, "[Progress of Financial Regulatory Reforms](#)", April 16, 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
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- 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
- NAACP
- 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

