



**Americans for Financial Reform**  
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Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 677, the “Interaffiliate Swaps Clarification Act”.<sup>1</sup> This legislation creates a sweeping exemption from new derivatives rules for inter-affiliate swaps, or swaps between companies or subsidiaries that share some level of common ownership. HR 677 would almost completely exempt inter-affiliate swaps from the basic systemic protections created in the Dodd-Frank Act. For most purposes this legislation would exclude such trades from even the definition of ‘swap’, which greatly narrows regulators’ jurisdiction over the derivatives market. Since HR 677 would define many swaps between companies that do not even share majority ownership as ‘inter-affiliate’ swaps, this is potentially a very wide exemption.

Proponents of this legislation have suggested that some form of statutory change is necessary to address special issues created by inter-affiliate swaps. This is false. In fact, the Commodity Futures Trading Commission (CFTC) has recently finalized an extensive rule distinguishing interaffiliate swaps from other trades, and exempting most inter-affiliate swaps from a range of Dodd-Frank rules involving clearing, execution, and margin.<sup>2</sup> Thus, the more sweeping exemption in this legislation is both dangerous and unnecessary.

Inter-affiliate swaps are an area of enormous complexity. The major Wall Street banks have literally thousands of subsidiaries in dozens of countries. For example, according to a recent Federal Reserve analysis JP Morgan Chase has 3,391 subsidiaries globally, while Goldman Sachs has 3,115.<sup>3</sup> Both banking and insurance regulators have traditionally placed restrictions on inter-affiliate swaps because they provide a simple means to transfer risk between different types of entities within a holding company, and between different jurisdictions with different levels of regulation. The transfer of derivatives risks to affiliates in unregulated jurisdictions can permit complete evasion of critical derivatives rules on clearing and other protections.

Furthermore, affiliates are legally separate companies that are treated separately in bankruptcy. An affiliate may go bankrupt separately from the larger group and may be unable to deliver on its derivatives obligations. If the larger corporate group becomes bankrupt, then the question of

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<sup>1</sup> [Americans for Financial Reform](http://www.ourfinancialsecurity.org) is an unprecedented coalition of more than 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, faith based and business groups.

<sup>2</sup> Commodity Futures Trading Commission, “[Clearing Exemption For Swaps Between Certain Affiliated Entities](#)”, 17 CFR Part 50, RIN 3038-AD47, April 1, 2013.

<sup>3</sup> Avraham, Dafna, Selvaggi, Patricia and Vickery, James I., A Structural View of U.S. Bank Holding Companies (July 16, 2012). Economic Policy Review, Vol. 18, No. 2, pp. 65-81.

which affiliate holds which derivatives obligations can become extremely important, as affiliates in different jurisdictions will be subject to different bankruptcy rules. Derivatives collateral held in foreign jurisdictions may become unavailable to U.S. claimants. This is what happened in the case of the Lehman Brothers bankruptcy.

At the same time, given the potential for risk sharing across the group there may be reasons to exempt some types of inter-affiliate swaps from some types of regulations. This is exactly what the CFTC has done in its rule. The complexity of this issue makes it a classic example of an area that is appropriate for careful analysis and rulemaking by regulatory experts. The CFTC's rule details the potential ways in which inter-affiliate swaps can possibly increase systemic risk and specifies the appropriate risk management procedures that should be maintained in cases where swaps are exempted from Dodd-Frank rules.

In contrast, HR 677 provides a near-universal exemption from critical swap regulations for inter-affiliate swaps. It does not address any of the concerns regarding systemic risk raised by the CFTC. It is apparently based on the assumption that inter-affiliate swaps cannot lead to systemic risks, even if they are between affiliates that share only partial ownership and are located in different jurisdictions under different regulatory rules. Furthermore, HR 677 defines affiliated companies only as those companies that report financial information on a consolidated basis. Since consolidated reporting does not require majority ownership, this means that swaps between companies that do not share majority ownership may be exempted from relevant rules.

HR 677 does state that swaps between affiliates that are both insured depository institutions and swaps entities (such as swaps dealers or major swaps participants) could not qualify for the inter-affiliate exemption. However, this represents only a tiny fraction of the swaps potentially exempted from regulation by this legislation. Many important swaps dealers are not insured depository institutions, and many insured depository institutions fall below the thresholds necessary to be designated as a swaps entity.

Proponents of this bill point out that a similar bill passed the House last year, before the CFTC's rule was proposed. At that time, AFR commented that given the complexity of this issue it would be appropriate for legislators to leave this matter to regulatory discretion. Now regulators have indeed spoken on this issue, and it is even less appropriate today to act without considering the work that they have done.

Thank you for your consideration. For more information please contact AFR's Policy Director, Marcus Stanley at [marcus@ourfinancialsecurity.org](mailto:marcus@ourfinancialsecurity.org) or 202-466-3672.

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
- 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
- Center for Effective Government
- 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
- Home Defender's League
- 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
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- 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 Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- 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 Affiliates*

- 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

